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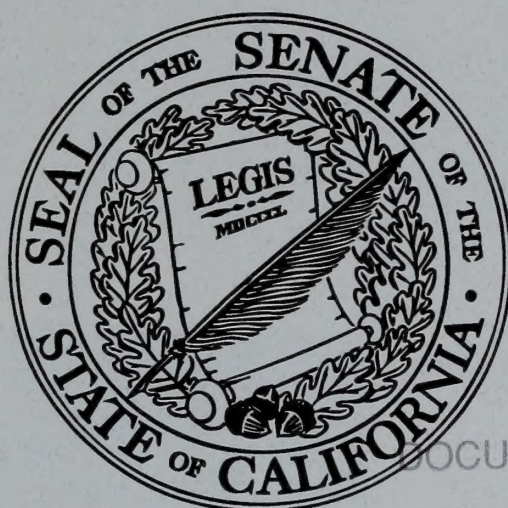
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STATE OF CALIFORNIA



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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12
13 SACRAMENTO, CALIFORNIA

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16 WEDNESDAY, JANUARY 12, 2005

17 1:40 P.M.

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27 Evelyn J. Mizak
28 Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to SENATOR BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

LUCINDA "CINDY" A. EHNES, Director
Department of Managed Health Care

DWAYNE DAUNER, President and CEO
California Hospital Association

JACK LEWIN, M.D., CEO
California Medical Association

DONALD H. CRANE, President
California Association of Physician Groups

KAREN HENRY
National Alliance for the Mentally Ill

BETH CAPELL
Health Access California

MEMBERS

MEMBERS

MEMBER FOR REAR, 1914

MEMBER FOR REAR, 1915

MEMBER FOR REAR, 1916

MEMBER FOR REAR, 1917

MEMBER FOR REAR, 1918

MEMBERS

MEMBER FOR REAR, 1919

MEMBER FOR REAR, 1920

MEMBER FOR REAR, 1921

MEMBER FOR REAR, 1922

MEMBER FOR REAR, 1923

MEMBER FOR REAR, 1924

MEMBERS

MEMBER FOR REAR, 1925

MEMBER FOR REAR, 1926

MEMBER FOR REAR, 1927

MEMBER FOR REAR, 1928

MEMBER FOR REAR, 1929

MEMBER FOR REAR, 1930

MEMBER FOR REAR, 1931

MEMBER FOR REAR, 1932

MEMBER FOR REAR, 1933

MEMBER FOR REAR, 1934

MEMBER FOR REAR, 1935

MEMBER FOR REAR, 1936

1 REED HASTINGS, Member
2 State Board of Education

3 JACK O'CONNELL
4 Superintendent of Education

5 RUSSLYNN ALI, Director
6 The Education Trust West

7 STEVE BARB, CEO and Founder
8 Green Dot Public Schools

9 LUIS AREVALO, Student
10 Animo Leadership Charter High School

11 GEORGE MARTINEZ
12 California Federation of Teachers

13 GLEN THOMAS, Executive Director
14 California County Superintendents Association

15 CAPRICE YOUNG, CEO
16 California Charter Schools Association

17 JIM HAWLEY
18 Tech Net

19 ANDREA BALL, Director, Youth Relations
20 Long Beach Unified School District

21 RICKY GILL, Student Member
22 State Board of Education

23 DENNIS CIMA, Education Director
24 Silicon Valley Manufacturing Group

25 CHRISTOPHER CABALDON, President
26 Ed Voice

27 MONIB KHADEMI
28 Mill Valley School Board

MARTHA ZARAGOZA-DIAZ
Californians Together

1 JAMES ZAHRADKA, Attorney
2 Public Interest Law Firm, San Jose

3 MARIA S. QUEZADA, Ph.D.
4 California Association for Bilingual Education (CABE)

5 MARTHA GUZMAN
6 California Rural Legal Assistance Foundation

7 CYNTHIA ALVILLAR
8 Mexican American Legal Defense and Educational Fund
2 (MALDEF)

9 ANA GAMIZ
10 National Council of La Raza

11 DENIS O'LEARY
12 League of United Latin American Citizens (LULAC)

13 RAFAEL MUNOZ ROCHA
14 Private Citizen

15 GABRIEL MEDEL
16 Parents for Unity

17 VIK MALHOTRA, Legislative Advocate
18 Asian Americans for Civil Rights and Equality
19 Asian Pacific American Legal Center of Southern
20 California
21 Chinese for Affirmative Action

22 PETER SCHILLA
23 California Association of Asians for Bilingual Education
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: I'd like to call the meeting to order.

I apologize that there aren't enough seats in this historic building for all of you to sit down.

I apologize for being late. This is my first day on this job and I was in the wrong room. I was kind of wondering why there was nobody there. That ought to give you a lot of encouragement.

Secretary, please call the roll.

[Thereupon SECRETARY WEBB called the roll.]

CHAIRMAN PERATA: We have a quorum of five.

I'd also like to point out there is no one here who served on this committee last year. So we're all brand-new, so be nice.

I'd like to ask Cindy Ehnes to come forward, please. Good afternoon.

MS. EHNES: Good afternoon and thank you very much.

CHAIRMAN PERATA: You are being confirmed to the Department of Managed Care as the Director.

MS. EHNES: Yes, Mr. Chairman.

CHAIRMAN PERATA: Proceed.

MS. EHNES: Thank you very much.

I am so pleased to have the opportunity to appear in front of you for confirmation.

And before we start, I'd just like to thank a few

1 people who are very significant. The first is, I'd like to
2 thank my predecessors, Daniel Zingale, former Director, and Jim
3 Tucker, former acting Director, for handing off a department
4 that this state can be extremely proud of.

5 I'd also like to thank my Chief Deputy, Lew
6 Chartrand, who is just an outstanding individual and an
7 outstanding aid to me and, again, to the state; as well as my
8 staff, who provide everyday excellence to the state and to its
9 citizens.

10 And finally, I'd like to thank my husband, Jack
11 Ehnes, who is a wonderful support for me. Thank you.

12 In reviewing my letters of support, when I was
13 reading them I said to myself, you know, I sound so sensible,
14 and I sound so balanced and very rational.

15 CHAIRMAN PERATA: It disturbed me as well.

16 [Laughter.]

17 MS. EHNES: Yes, I thought so. And I thought,
18 boy, these people don't know me because what is missed in that
19 is the fact that I am a passionate advocate for the health
20 security of Californians.

21 And I came to this passion by way of being a
22 mom. And I was just practicing law when my second daughter was
23 born with a chronic medical condition, and we discovered that we
24 were unable to get her on our health insurance.

25 That completely changed my career at that point,
26 because at that point I became a mom who was actively involved
27 in ensuring that people had access to insurance. I started a
28 grassroots campaign in Colorado to help get the High-risk Pool

1 in Colorado passed, and then became part of that board, at first
2 as consumer representative to that board and later Chairman of
3 that board for several years. Then went on to work in the
4 Colorado Department of Insurance in enforcement to ensure that
5 laws were appropriately passed and enforced to protect
6 consumers.

7 And what I have felt since that time is that my
8 job is always to work for two groups of consumers. There are
9 consumers who have insurance who want to make sure that they get
10 the best care out of their benefits. But there's a second group
11 of consumers that we all know and see growing, and that is
12 people who lack insurance coverage altogether. I feel that my
13 job is to work for both of those, to both work to protect
14 enrollees, but also to work to ensure that health insurance
15 products are able to stay available and affordable.

16 And so, as I go into the future of this job, I
17 will both be working for my daughter, trying to shape the future
18 of health care in California for next number of years, as well
19 as working on behalf of all California citizens.

20 I'd like to just quickly detail some of the my
21 accomplishments in the past ten months. First of all, I think
22 the most important thing that I've tried to do is to bring
23 leadership to the industry to help, again, shape the future of
24 managed care in this state and try to replace an atmosphere of
25 contention with an atmosphere of consensus and consensus
26 building and problem solving.

27 The other thing I've tried very hard to focus on
28 over the last ten months is to fully implement six laws that

1 were previously passed by this Legislature that I felt were not
2 in adequate priority for the DMHC. The first is AB 1455,
3 requiring prompt pay to our state's physicians and hospitals who
4 provide the safety net system in this state. In fact, we will
5 be announcing a major enforcement action in the near future
6 regarding those prompt pay laws.

7 SB 260, that requires that provider groups that
8 take risk from health plans must also meet financial solvency
9 standards.

10 AB 88, the Mental Health Parity law, making sure
11 that it is fully implemented.

12 AB 2179, Access to Care, ensuring that California
13 enrollees have access to the right care at the right time.

14 SB 244, Continuity of Care, which we have seen
15 play a very important role in the recent transition of enrollees
16 from Blue Shield to other health plans.

17 SB 842, the Prescription Drug Law, and SB 853,
18 the Cultural and Linguistic Access to Care law, to ensure that
19 every enrollee in California, regardless of their cultural or
20 language background, has again access to the right care at the
21 right time.

22 And as part of all of these undertakings, we have
23 also approved several consumer groups to be reimbursed for their
24 time and effort in responding to these regulations through the
25 Consumer Participation Fund, again, another law passed by the
26 Legislature that had not been implemented at the time I arrived.

27 My goals are to first of all ensure, as I said,
28 that Californians have access to the right care at the right

1 time through vigorous enforcement of existing laws.

2 Secondly, to implement the Quality Improvement
3 and Cost Containment Commission that needs to get up and running
4 and will be done in the next couple of months.

5 We needed to change the business practices in our
6 Licensing Unit in order to help keep HMOs competitive.

7 And finally, it is my goal to establish our
8 department as a nationwide leader in health policy.

9 In conclusion, I wanted to note that I bring to
10 this position the heart of an advocate but with a pragmatic
11 idealism that allows me to work where the game is being played
12 as opposed to where I wish it was. And my very capable and
13 committed staff are thrilled to have the opportunity to serve
14 California in our respective positions at the department in
15 order to ensure that Californians retain access to affordable,
16 available, competitive health care.

17 And I am now pleased to respond to your
18 questions, thank you.

19 CHAIRMAN PERATA: Thank you.

20 Members? Mr. Battin.

21 SENATOR BATTIN: Thank you, Senator.

22 I appreciated our chance of meeting the other day
23 and liked what you had said. I think we share a lot of beliefs
24 about what's wrong with the health care industry, and now we've
25 just got to figure out how to fix it.

26 I also appreciated your comment in the Chronicle,
27 where you said you were tough on the issues but soft on people,
28 and that you are not adversarial.

1 In your position, can you elaborate on that
2 comment and being able to regulate the HMOs in a nonadversarial
3 manner?

4 MS. EHNES: Yes, Senator.

5 Well, I bring to my background that I am a
6 trained advocate of interest-based negotiations, and I'm a
7 certified mediator. And interest-based negotiations basically
8 focuses on identifying the respective interests of people and
9 reconciling those interests so that everybody leaves the table
10 getting something that they needed out of the deal. And I'm
11 very focused in that approach and actually have taught that.

12 So, that's something that I feel that I'm able to
13 bring to this position, that again, as I say -- said in the
14 Chronicle article, allows me to be really tough around hard
15 issues, because we have very hard issues, but very soft on the
16 people involved so that we are all able to engage in an
17 atmosphere where we all feel safe.

18 SENATOR BATTIN: Thank you.

19 CHAIRMAN PERATA: Did you have any statements
20 that you made in the Mercury News or the LA Times? We want to
21 give equal time here.

22 [Laughter.]

23 MS. EHNES: I love both those papers.

24 CHAIRMAN PERATA: You're very good at this job.

25 Senator Ashburn.

26 SENATOR ASHBURN: I just have one question for
27 you, and that has to do with the fact this is a relatively new
28 agency of state government. And one of the criticisms that has

1 occurred in the past is the unwillingness, or seeming
2 unwillingness, of the agency to do its job in resolving disputes
3 and intervening between health organizations when there are
4 disputes. And there have been specific circumstances where
5 those enrollees in health plans have not received benefits
6 through providers because of these disputes.

7 I would just like to know your view of your role
8 in acting when a circumstance has reached a point where the
9 parties have not been able to resolve their differences?

10 MS. EHNE: Well, Senator, I believe that the
11 role of the department is to protect enrollees first and
12 foremost. But how we protect enrollees, I might differ just a
13 bit from my predecessor, because I do believe that ultimately we
14 at the department are accountable to ensure that enrollees have
15 appropriate access, for example. And when you have disputes in
16 the network, and you see a network falling apart, perhaps,
17 because of those disputes, it is absolutely incumbent on the
18 department to be involved. And make no mistake, we will
19 absolutely be involved.

20 Making sure that you're doing that appropriately
21 is the caution that you always must exercise. There are some
22 times when the market is working the way it should, and some
23 times when it needs some intervention, needs some steering, to
24 make sure that it's moving in the direction that, again,
25 protects consumers from the downsides.

26 So, we take very seriously our additional role to
27 evaluate when we should be involved.

28 SENATOR ASHBURN: Thank you.

1 CHAIRMAN PERATA: Other Members, questions?
2 Senator Bowen.

3 SENATOR BOWEN: Thank you.

4 My question has to do with the legal authority
5 that you have as the Director to waive provisions of the
6 Knox-Keene Act. Could you describe?

7 There's basically nothing in the law that
8 prescribes that authority. Could you talk a little bit about
9 your view of that authority? When it should be exercised,
10 whether you think we ought to be looking at more explicit
11 criteria either statutorily or in regulation? And whether you
12 foresee any circumstances under which you might waive
13 Knox-Keene?

14 That's a lot of questions.

15 MS. EHNES: There were a few in there.

16 SENATOR BOWEN: Basically the question is about
17 the waiver provision.

18 MS. EHNES: Yes, I understand.

19 It's one of those where you temporarily, when you
20 first take the job, you say "Whoa, I've got authority to do
21 that?" I mean, that sounds pretty great. And then you realize
22 that you really are very, very limited in when you actually can
23 apply those kinds of provisions.

24 I think it is absolutely appropriate to retain
25 the right in the Director to look at conditions exiting and to
26 respond to those conditions. And the trust that this committee,
27 and the Senate, and the Legislature, and the Governor place in
28 me is to know when it is right to do something like waiving a

1 particular provision, and to make that call, and then to be
2 subject to appropriate oversight then to review those decisions.

3 All of those decisions become public, so there is
4 that availability for public scrutiny.

5 Having said that, we virtually never waive any
6 provisions of the Knox-Keene Act. So, it's something that is
7 seldom used but I think is an appropriate tool at an appropriate
8 time.

9 SENATOR BOWEN: So in your tenure, you haven't
10 seen -- have you seen a request for a waiver?

11 MS. EHNES: I have not; I have not.

12 SENATOR BOWEN: Then I won't ask you if you
13 thought it was appropriate.

14 [Laughter.]

15 CHAIRMAN PERATA: Senator Cedillo.

16 SENATOR CEDILLO: I know you talked about the
17 area of insured doesn't exist by itself, the fact that we have
18 six-and-a-half million uninsured in California plays a major
19 role in quality and services provided to those who are insured.

20 Let's talk about what you envision your role and
21 strategies in participating in our overall effort to make sure
22 that we do provide quality and adequate health care for all
23 members of our society in California.

24 MS. EHNES: First of all I, like you, share a
25 tremendous concern over people who lack basic health security.
26 It is something that I understand extremely well. And it is
27 something that I have worked now for the last 19 years on in
28 various ways to try and remedy. And so, I bring to this

1 position that experience and that commitment to look for
2 solutions where ever we can.

3 We will be using the Cost Containment Commission
4 to explore some of those issues. There are other proposals,
5 both by the administration and I'm sure by the Legislature, that
6 we will be actively engaged in working on and really, again,
7 feel a very strong commitment to continuing to work on what have
8 proven to be extremely complex issues.

9 I think the thing that brought it home to me for
10 California was when somebody said to me that there are four
11 million uninsured people in L.A. County alone. And that was the
12 entire population of the state I came from, Colorado. Every
13 man, woman and child in Colorado equals that number. And that's
14 astounding.

15 And, you know, again you have my absolute
16 commitment that we will be working very hard on those issues.

17 SENATOR CEDILLO: Another one. We're all in the
18 public light, and I applaud you for stepping forward and joining
19 us.

20 One of the concerns that consumers have may or
21 may not impact directly the delivery of services they receive,
22 there may not be a nexus or a causal relationship, but consumers
23 have a concern with executive pay. I'm sure when you're an
24 executive, you look at it differently.

25 But in your position, give me your perception how
26 we're going to address this as we try to build faith and
27 confidence from our public that your office is doing all that
28 you can on behalf of consumers, subscribers.

1 MS. EHNES: Well, it is something that we are
2 concerned about. We are concerned about it not in the context
3 of what is an executive, a particular executive worth or not
4 worth, but rather in the context of overall administrative costs
5 of health care, and how -- there's some new studies out talking
6 about how administrative costs account for about one-third of
7 the costs of health care now, of insurance premium. That's a
8 very sizeable portion that actually never results in any care to
9 an individual.

10 Now, I mean, it creates the atmosphere in which
11 that care occurs, and I don't want to belittle that. But at the
12 same time, we're all concerned about that.

13 And we will be attending to the issue of
14 administrative cost increasingly. I think we're really starting
15 to get our arms around what -- the way some of those costs come
16 to bear on insurance premiums, as I just said. And we will be
17 continuing to work on how that translation of administrative
18 cost into the cost of premiums should be addressed through
19 appropriate regulation.

20 SENATOR CEDILLO: Thank you.

21 CHAIRMAN PERATA: Senator Battin.

22 SENATOR BATTIN: On costs, when we talked about
23 this the other day, or was it yesterday?

24 MS. EHNES: I think it was yesterday. They're
25 all blurring.

26 SENATOR BATTIN: When we talked about this
27 yesterday, I expressed to you my real frustration with what I
28 see. And I don't know if waste is the right word; it's just a

1 system that has somewhat broken down in excess.

2 Which is, in a capitated system or managed care
3 system, you have the HMO, which I believe now has become more of
4 a marketing agent than anything else. They go out, and they
5 round up customers, and then they sell that risk to a middle
6 man, or a broker, or a doctors' group. And they get thirty
7 dollars a month for a patient; they sell that for twenty-seven
8 dollars, and they net three, and they don't have any risk. Any
9 time anybody uses they system, it doesn't cost them anything.
10 They just get three dollars for every patient that they can
11 find.

12 Then that middle broker, another part of the HMO,
13 might sell it to a doctors' group; might take a five dollar cut
14 on that. Then suddenly you've got another third of the money
15 that's disappeared.

16 None of those assigning and selling risk to one
17 another, not one of those dollars actually provides health
18 care. It ultimately is how much the doctor is paid for his
19 services, and if he can afford to offer those services for how
20 much he can be paid from that last person on the chain, when the
21 employer or whoever holds the insurance is paying a whole
22 different amount.

23 I don't know if you can, but how do you think
24 that you can affect that, to streamline it or cut out some of
25 the middle layers there, or to get more of the dollar to the
26 patient and doctor?

27 MS. EHNES: Well, Senator, first of all I think
28 the health plans might disagree with the idea that they don't

1 take any risk.

2 SENATOR BATTIN: Yes, we've had that discussion,
3 too.

4 MS. EHNES: But having said that, I think first
5 of all what we have seen in a shift from fee-for-service
6 medicine to managed care is, where the risk of fee-for-service
7 was over-utilization of services because you were paying each
8 and every time a patient had an encounter with a physician or
9 hospital, the shift to managed care has brought kind of the
10 opposite concern from a regulatory perspective, which is, are
11 you perhaps incenting under-utilization on the part of patients
12 by creating financial incentives that discourage care.

13 That is why the department came into being. That
14 is our primary mission, is to ensure that appropriate medicine
15 is provided, meaning right care, right time is our motto.

16 And in terms of looking at whether the model as
17 currently structured should change from a regulatory
18 perspective, I think there's market influences that are starting
19 to change models, and we'll be tracking those and working on
20 what the implications of those market changes are on that model.

21 Having said that, we are concerned about
22 administrative costs and having, perhaps, overlapping
23 administrative costs when you have an HMO and then you have a
24 physician group.

25 SENATOR BATTIN: Do you group the sale of risk
26 and salaries of executives into administrative costs?

27 MS. EHNES: I believe we put all of that into --

28 SENATOR BATTIN: That's what, when you say

1 administrative costs, that's what you're including?

2 MS. EHNES: Yes, we're looking at the whole
3 package of costs that is nonmedical care, essentially. It's
4 just two components of the premium: the administrative costs
5 and the medical loss ratio, which is how much medical care is
6 actually being provided. So, we will look at that.

7 But the other part of that, you talked about the
8 physician, the individual physician or hospital being at the end
9 of the line.

10 One of the things I've said, and tried to say as
11 loud and clear as I can, is that I think it is wrong to have a
12 system where a health plan gets paid up front, a provider group
13 gets paid up front, and the only person in the system that is
14 taking a gamble on whether they're going to get paid, and get
15 paid on time, is the physician or hospital.

16 And I have said, again, loud and clear, and in my
17 last ten months have tried to exercise this on a daily basis,
18 that is not tolerable, and will not be tolerated. And we are
19 ensuring that the AB 1455 Prompt Pay laws, as I said, are
20 vigorously enforced.

21 So, I don't like the idea that at the end of the
22 line is the person who actually is the one touching the patient.

23 SENATOR BATTIN: Thank you.

24 CHAIRMAN PERATA: Thank you.

25 You'll see in a moment why I let everybody else
26 ask the real questions. I'm filler.

27 Those of you who practice before this committee
28 professionally will notice that there'll be a change. I will go

1 last, bat ninth.

2 First of all, I'm delighted to be able to cast an
3 affirmative vote for you. I think you've done a wonderful job.
4 Another of the appointments that the administration has made
5 that I think are consistent with trying to make things work.

6 You mentioned AB 88, the Parity law. I was one
7 of the co-authors of that. And anything that you can do to make
8 that work would be wonderful.

9 One of the things that is always vexing to us, we
10 pass a law, pass a statute, and then it gets regged or
11 implemented through an agency. And sometimes it doesn't go as
12 far as we intended; sometimes it doesn't apply as we thought it
13 could be intended.

14 One of the things, I'd just like to make an
15 open-ended offer to you. As you get things like Senator
16 Speier's bill, the Golden Bear Prescription Bill, if you find
17 that what the intent was doesn't match up with what you're able
18 to do, if you can't reg it in a way that -- because we sometimes
19 think anything can happen, and usually it doesn't, or nothing
20 can happen and everything does -- if you would just let us know.

21 There's not a senator on either side of the aisle
22 That would not be receptive to a phone conversation. I don't
23 think it's a breach of your office to say, "If these changes
24 could be made in the statute, I think what you're trying to
25 accomplish could be better done." Just for whatever it's worth.

26 MS. EHNES: I appreciate that. We enjoy a very
27 close working relationship with the Legislature, and try very
28 hard, invited or not, to insert ourselves into the deliberations

1 of various bills for one purpose, and that is, and again, this
2 is my primary purpose, is to ensure that as we are implementing
3 a law through regulations, that we are able to accomplish the
4 will of the Legislature through that legislation by making sure
5 that it is practical, that it is grounded in reality and our
6 experience, and that we are able to deliver strong consumer
7 protection through that law.

8 So, we will. I will take your invitation, and we
9 promise to work with you.

10 CHAIRMAN PERATA: You don't have to go through
11 me. Just feel free to call them directly.

12 MS. EHNES: I'll do that.

13 CHAIRMAN PERATA: Now that we've concluded, if
14 anybody would like to come in support, don't feel compelled, and
15 under any circumstances be brief.

16 MR. DAUNER: I don't Senator Perata and Members
17 of the Committee, I'm Dwayne Dauner, President and Chief
18 Executive Officer of the California Hospital Association,
19 representing the hospitals in California.

20 We are pleased to appear here today in support of
21 Cindy Ehnes as Director of DMHC. She has proven to be a person
22 of integrity, fairness, and sound judgment. She is open, and
23 she has balanced the interests of consumers, payers, and
24 providers.

25 We believe that she is a great asset to all
26 Californians and to the department, and are pleased to endorse
27 her. And we respectfully request her confirmation.

28 Thank you.

1 CHAIRMAN PERATA: Thank you, sir.

2 Anyone else?

3 DR. LEWIN: Good afternoon. Chairman Perata and
4 honorable Members of the Committee, I am Jack Lewin. I'm a
5 family physician and the CEO of the California Medical
6 Association.

7 The physicians of California are also very
8 heartened by the performance already of the department under the
9 tenure of Director Cindy Ehnes. As you may know, in the past
10 we've had issues with the DMHC and its predecessor agency, the
11 DOC.

12 We believe Director Ehnes has brought
13 transparency and accountability to this job and very excellent
14 communications. We think what's best for patients ultimately
15 will be what's best for doctors, and we think that Director
16 Ehnes has in her mind the goal of making health care better for
17 patients in California.

18 We strongly endorse her confirmation. Thank you
19 very much.

20 CHAIRMAN PERATA: Thank you, doctor, for being
21 here.

22 MR. CRANE: Mr. Chair, Members of the Committee,
23 I am Don Crane. I'm the President of the California Association
24 of Physician Groups, CAPG.

25 My board has asked me to testify today to provide
26 our strong endorsement of Director Ehnes for her confirmation.

27 We interact with her weekly and probably daily,
28 so have a strong personal knowledge of just how smart, and hard

1 working, and capable she is, and knowledgeable, all of which
2 characteristics we would expect in really any director.

3 What she brings that we think warrants her
4 confirmation are two other features. Number one, highly engaged
5 and very approachable. In other words, all the stakeholders in
6 this room know how hard she and her department works to
7 understand the facts. Sure, we disagree from time to time, but
8 they go the extra mile in terms of knowing what needs to be
9 known to make the wisest decision.

10 And the second -- try to be brief -- and most
11 important feature here is her values-driven view of her job,
12 which causes her to want to protect consumers not just in a
13 direct way of protecting consumers, but the indirect way of
14 protecting the uninsured, which is in our view the barometer
15 really of the health of our health care system, something which
16 is in peril right now. So, that philosophical approach of
17 Director Ehnes to try and protect consumers by protecting the
18 health care system which is now in peril makes her particularly,
19 I think, valuable for all of us citizens.

20 We strongly endorse her confirmation and would
21 ask you to do the same.

22 CHAIRMAN PERATA: Thank you very much.

23 MR. CRANE: Thank you.

24 MS. HENRY: My name is Karen Henry. I'm from
25 NAMI California, which is California 's affiliate of the
26 National Alliance for Mental Illness.

27 We are very pleased to be able to support Cindy's
28 confirmation. And contrary to her belief that her passion has

1 gone unnoticed, it has not.

2 We are participating very strongly in the
3 regulatory process for access to health care and also to ensure
4 that parity is in fact implemented. And in that process, we
5 have taken great heart in the fact that she not only listens to
6 the interests of all stakeholders, but she has stated and
7 reflects the understanding that a health plan coverage is of no
8 use if there's no access.

9 We support her confirmation and urge it. Thank
10 you.

11 CHAIRMAN PERATA: Thank you.

12 MS. CAPELL: Beth Capell on behalf of Health
13 Access California, also here today in support of the
14 confirmation.

15 We would note that as many, I think all the
16 Members of this Committee know, Health Access sponsored the HMO
17 Patient Bill of Rights, which led to the creation of the
18 department.

19 We have had the opportunity over the last year to
20 work with Ms. Ehnes on -- I think she actually missed a few
21 pending regulation packages on that long list -- on a variety of
22 regulations.

23 We have not always agreed with her, nor do we
24 expect to always agree with any director of a department, but we
25 are generally pleased with the regulation packages we have
26 seen.

27 However, we would concur -- and this is a notable
28 moment -- with Senator Battin that the -- I knew you'd be

1 surprised Senator.

2 SENATOR BATTIN: Say that again.

3 [Laughter.]

4 SENATOR BATTIN: It took you eleven years to say
5 that.

6 MS. CAPELL: No, I think it's happened more often
7 than that, but I did want it noted for the record that it is
8 important to account for the overhead that occurs when medical
9 groups take off their slice on the top, and that there's a
10 medical loss ratio there as well. And we would hope that the
11 pending regulations the department is considering would do a
12 little bit more to make public what Senator Battin so elegantly
13 described.

14 As we look forward, the issue we are the most
15 concerned about is the affordability of health insurance for
16 consumers. We would note that the process that currently goes
17 on now, the department reviews deductibles, co-pays and the like
18 that insurers suggest, and negotiate with employers, and that
19 most consumers are not aware until their employer says to them,
20 "Oh, by the way, you're going to pay more this year," what the
21 process is. There's not a public process for input on that. We
22 consider as we move forward that that is one of the things we
23 will want to work with the department and the Legislature in
24 correcting so that there is the opportunity for a consumer voice
25 in designing health HMO products, so that there is affordability
26 for the enrollees.

27 So, we would look forward to working with her and
28 with all of you in that process.

1 Thank you.

2 CHAIRMAN PERATA: Thank you.

3 Anyone else in support?

4 You've really got the trifecta here. I've never
5 seen these people together before.

6 MS. EHNES: I was also able to bring Senator
7 Battin and Ms. Capell together. I feel good about that.

8 CHAIRMAN PERATA: Anybody in opposition after all
9 that? Anybody want to come up?

10 Do you have family here present?

11 MS. EHNES: Just my husband, Jack.

12 CHAIRMAN PERATA: Just your husband, forget about
13 that.

14 MS. EHNES: No, I didn't mean just my husband.

15 [Laughter.]

16 CHAIRMAN PERATA: I thought you had some cousins.

17 MS. EHNES: I almost made it through the hearing
18 without putting my foot in my mouth.

19 CHAIRMAN PERATA: Jack, stand up. Welcome. I'm
20 glad you're here.

21 Motion's in order to approve.

22 SENATOR BATTIN: Move it.

23 CHAIRMAN PERATA: Senator Battin made a motion.
24 Call the roll, please.

25 SECRETARY WEBB: Senator Ashburn.

26 SENATOR ASHBURN: Aye.

27 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

28 SENATOR BOWEN: Aye.

1 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

2 SENATOR CEDILLO: Aye.

3 SECRETARY WEBB: Cedillo Aye. Senator Battin.

4 SENATOR BATTIN: Aye.

5 SECRETARY WEBB: Battin Aye. Senator Perata.

6 CHAIRMAN PERATA: Aye.

7 SECRETARY WEBB: Perata Aye. Five to zero.

8 CHAIRMAN PERATA: Confirmed. Thank you very
9 much.

10 MS. EHNES: Thank you very much.

11 CHAIRMAN PERATA: Our next item on the agenda is
12 confirmation hearing for Reed Hastings, who is a member of the
13 State Board of Education.

14 There are seats. Feel free to take one.

15 As everyone in this room knows, and certainly
16 people on the dais, this has been an interesting and difficult
17 couple of weeks surrounding this appointment.

18 Just for the record and by way of setting perhaps
19 the context for the ensuing discussion, this was originally
20 calendared almost a year ago, March of last year, for
21 confirmation. At that time, my predecessor made a decision to
22 not hear the confirmation because there had been some concerns
23 expressed that I think he thought could get worked out, or at
24 least aired.

25 And subsequent to that time, unfortunately, that
26 was not done. It pains me that it wasn't, because although
27 Mr. Hastings and I just met this morning for the first time and
28 had only one previous phone conversation prior to that, I have

1 admired, do admire, his work in education, the sacrifices that
2 he's made on behalf of some of the most vexing problems that
3 we've had.

4 Having said that, I believe that if we had had
5 more time, and he could have heard a discussion in our caucus
6 yesterday about the issue and about the Board of Education, he
7 would have been much encouraged. I had in fact, again, in the
8 eleventh hour, presented something to the Governor as a possible
9 alternative to the confirmation today, but we are where we are.

10 And I believe, however, that when individuals are
11 serving in the public, there is an absolute duty not only on the
12 part of those present here but on the part of every elected
13 official to have discussions with individuals, perhaps, where
14 there are differences or where they have prime
15 responsibilities.

16 This should not be characterized in my judgment
17 as an English learners versus debate. The context is much
18 broader than that. Reasonable people disagree.

19 Once again to Mr. Hastings, I believe that if we
20 had had a little bit more time and our caucus members had an
21 opportunity to be with you in the way it was yesterday, we might
22 have had a different outcome. But we only have until Friday.

23 I'll also point out that we could have not had
24 this hearing today. It's within my authority, as I've come to
25 realize what my authority is, to simply not hear the matter.
26 However, I believe that when the Governor of this state appoints
27 somebody, that person is entitled to a hearing.

28 You and I discussed that. You decided to come

1 forward, and I am pleased to give you an opportunity to present
2 yourself.

3 MR. HASTINGS: Thank you, Senator.

4 For five years I've had the great honor and
5 pleasure of serving on the State Board of Education.

6 And it's turned out that my favorite part of
7 Sacramento is not actually the Capitol. It's the American
8 River. In particular, since many of you have been on it, you'll
9 know the Trouble Maker Rapid. And it's unique because it's very
10 long and tumultuous. It flows from large rock, to large hole,
11 to cliff, to undercut, and it's just continuous rapid pounding.
12 And if you get off your line at any point, your raft will tip
13 over.

14 In many ways the five years on the State Board
15 have been like that. And when you think of the issues such as
16 High School Exit Exam, any one of these are large enough to
17 swamp a state board.

18 Not only have we had the High School Exit Exam,
19 we've had the SAIT teams and the interventions; IIUSP; the
20 awards programs; the API stability and its evolution from a
21 system based on a nationally normed reference test to a system
22 based on California standards; textbook adoptions; charter
23 schools. Any one of these is enough to sink a state board.

24 And yet, with the staff in the State Board and
25 with the incredible cooperation and perserverance of the
26 Department, I'm extremely proud of what this team has
27 accomplished over last five years. And we've accomplished it on
28 a volunteer basis really for the benefit of the children of

1 California.

2 There's only one other State Board member that I
3 could find in history that's been not confirmed. She also
4 served for four years, got an one-year reappointment. Her name
5 is Marian Joseph, a giant whose footsteps I am very proud and
6 honored to walk in. Marian Joseph has accomplished at least ten
7 times more than I ever have. Of course, she's probably at least
8 ten times older than I am, too.

9 [Laughter.]

10 MR. HASTINGS: She started working in education
11 in the 1960s. Forty years later she is still working for the
12 benefit of children.

13 And I hope I have half of the courage and love
14 that she has had and expressed.

15 California's a unique state. We have 1.5 million
16 English learners, over 25 percent of our students, English
17 learners whose home language is not English and who are not yet
18 fluent reading and writing in English. This presents unique
19 challenges in California.

20 In the past five years, we've been very proud to
21 provide intensive English instruction across the board to most
22 of our students. Those students have responded, and we have had
23 stunning results. Five years ago, there was only 256,000
24 Hispanic students that tested above the national average in
25 reading English. Two years ago, the last time we gave the SAT 9
26 test, it had not grown by 10 or 20 percent, or 40, or 50, or 60,
27 or 70, or 80 percent. It had almost doubled to 491,000 students
28 reading above the national average.

1 Now, are we satisfied? Do we feel like the job
2 is done? Of course not. There is lots of room to go forward,
3 and we are continuing to make progress.

4 Two years ago, we extended those efforts in a
5 requirement that students that are in bilingual classrooms have
6 to do at least two-and-a-half hours of English instruction,
7 approximately 50-50. This boulder is now causing the raft of my
8 confirmation to spin above the rapids.

9 I am asking you for a chance to have that vote
10 before the caucus and Republicans, and to see where does
11 everyone stand on this issue. Should students get mostly
12 non-English instruction, or at least half English instruction?
13 I believe that to be the core issue.

14 With that, I turn it over.

15 I'd just like to -- although the President and I
16 have differed on some issues, it's really been extraordinarily
17 -- you've handled my case extraordinarily graciously, and I
18 thank you for that.

19 CHAIRMAN PERATA: Thank you.

20 Members? I'm sorry, Jack, a Constitutional
21 Officer, and I can only plead that I'm new.

22 SUPERINTENDENT O'CONNELL: Who used to be on
23 Rules Committee.

24 CHAIRMAN PERATA: Superintendent.

25 SUPERINTENDENT O'CONNELL: Thanks, Mr. Chairman
26 and my friends.

27 I'd like to tell you, four years ago I came
28 before this committee in support of Mr. Hastings to be appointed

1 to the State Board. And I remember saying then, I believe this
2 will be a very good appointment.

3 I want to tell you today, after being with him on
4 the State Board, me over there two years, sitting over here for
5 a couple of years, he is an outstanding member of the State
6 Board of Education. He is bold; he is thoughtful; he is very
7 articulate. He is very intelligent. It's the type of
8 entrepreneural spirit that he put in his private businesses,
9 plural, that he's brought to the State Board of Education.

10 This is the kind of person that you want in
11 public service, the kind of person you want sitting, helping
12 improve our educational delivery system.

13 He's a person that feels passionately and
14 strongly about high expectations and high standards for all of
15 our students. He's a person that's helped us put in place an
16 accountability system that our business community really visited
17 upon us six or seven years ago, if you recall.

18 He is committed to helping us close the
19 achievement gap. He cited some statistics; we can cite more,
20 that we are seeing a narrowing of the achievement gap,
21 especially when we have more resources because of the
22 Legislature's lead in programs like IIUSP and high priority
23 schools. Reed Hastings is committed to both of those
24 programs.

25 We really have done a lot. He was there before I
26 was, across the street, to help develop world-class content
27 standards. These are the envy and the model of other states.
28 All of the state superintendents get together in this country

1 twice a year. When I get together with my forty-nine
2 colleagues, and we move around the country, people are always
3 asking me, "What are the trends in education?" California
4 truly is the trend setter. I mean, publishing companies, they
5 don't publish different textbooks for every state. They publish
6 one set of textbooks. They're based upon California standards.

7 When I first went -- when I went to my first
8 meeting in Washington, D.C. almost two years ago now, on the
9 agenda it said, "Report from California State Superintendent."
10 I thought that was a period that they hazed the new guy, and it
11 turns out they really want to know what are the trends. And I
12 was asked questions like, "Is it true that algebra is now being
13 asked of students in the eighth grade?" Well, yes it is. It's a
14 much more challenging curriculum.

15 We had people just a couple months ago from a
16 progressive industrialized country from the Far East, from
17 Japan, to study our world-class contents standards so they could
18 replicate those and extrapolate those within their own country.
19 This gentleman helped put those together.

20 We put in place an accountability system. It's
21 an accountability system that's based on a growth model, not the
22 status bar that the federal government has to see what
23 percentage of students are getting over the bar. Reed Hastings
24 knows, the starting line for our kids is not the same. It's not
25 the same for all students. So, we have an accountability system
26 that shows growth so that every single year, schools have a
27 legitimate shot of making sure that they're not labeled as
28 nonperforming or program improvement, a concern that this

1 Legislature had when we adopted that accountability program five
2 years ago in the Special Session. It was contained in Senator
3 Alpert's bill, SB 1X.

4 He truly believes that all students can learn.
5 He truly believes that we need to design that system so that
6 each student can receive that personalized and individualized
7 approach towards public education. He believes in high
8 standards and rigor for all of our students.

9 We need an institutional memory on that Board of
10 Education. I think this Legislature is sensitive to that issue,
11 especially in this era.

12 The Governor's made some good appointments to the
13 State Board of Education, and I applaud each of them. And the
14 majority of the State Board is here in the audience today on
15 their own time, their own volition, in support of Mr. Hastings.

16 He truly has been a champion for world-class
17 standards and for our accountability system. But that's not
18 enough. When some textbooks were insensitive to some in the
19 minority community, he singularly, in a public session,
20 reprimanded and called out that textbook company for mistakes
21 that neither of us, and you can put me in there as well, knew
22 were obviously forthcoming.

23 He's made sure that our assessment instrument,
24 our testing system, is aligned to our standards. That wasn't
25 always the case. Turn the clock back six or seven years ago
26 when we developed world-class standards and used an
27 off-the-shelf test. I mean, as a teacher, you heard from your
28 friends, and I heard from my friends, "Jack, should we teach to

1 the standards over here, or should we teach to the test?" You
2 don't hear that anymore, and it's because of right here, it's
3 because of right here. He made that alignment possible.

4 He made the alignment possible with our
5 instructional materials, not over night, but it's taken time so
6 that those institutional materials now are also aligned to our
7 standards.

8 We were asked four years ago, sitting at this
9 very table -- actually we were in a room on the third floor off
10 the Senate Floor -- he was asked then by Senator Burton, "How
11 are you going to help implement No Child Left Behind," which was
12 being discussed conceptually, "and how are you going to make
13 sure that we can reach out to minority students and students who
14 have historically not benefitted from a sound public education
15 system in California, and how are you going to break that cycle
16 of students not being able to attend, to graduate from high
17 school, attend our community colleges, CSU and UC?"

18 Reed's response then was, "I'm a strong supporter
19 of our sub groups." We have sub groups in our accountability
20 system so that schools will not be rewarded, schools will get
21 remedial work if they need that help, if we leave any of those
22 sub groups behind.

23 He's a strong supporter of the sub groups on
24 English language learners, of the ethnic minority community, of
25 our low socio-economic backgrounds, and for special education as
26 well.

27 And let me tell you, I think the biggest success
28 story we've had is No Child Left Behind in California. I've

1 been a critic of it at times. We all support the goals.
2 Everybody in this room supports the goals of No Child Left
3 Behind. But it's been overly rigid in my opinion, and it's a
4 one-size-fits-all approach in my opinion. And in my opinion
5 it's been underfunded, and you folks know that better than I
6 have to know that today.

7 Let me tell you the biggest success story we
8 have. Reed and I and Carrie Mazzoni, Secretary Reardon's
9 predecessor, went back to Washington, D.C. on the sub group
10 issue on English language learners. When that legislation was
11 signed by President Bush initially, it said that the moment an
12 English language learner is reclassified out of that sub group,
13 you can no longer consider that English language learner, who's
14 now been reclassified as an English learner, for purposes of
15 calculation in that sub group.

16 The three of us went back, met with Secretary
17 Paige and his 25 lawyers, and we were able to persuade them to
18 allow for calculation purposes English language learners to be
19 in that sub group for three years. That was huge. That's the
20 biggest success story we've had in terms of flexibility for
21 NCLB. And I applaud the federal government for that decision.

22 And I tell you, the minute we heard about that, I
23 heard from almost every other state superintendent, "How in the
24 world did you get that?" Well, it was three of us, led by this
25 gentleman, that went back to make sure that our English language
26 learner sub groups would not be labeled automatically as
27 failures.

28 Think about what they were initially setting us

1 up for. My analogy was, you have a bucket of water and a
2 spigot. And you never have a bottom in that bucket. And so,
3 that's why that was really critical for us. And that, again,
4 was due to Reed.

5 In closing, he's a true public servant. He
6 obviously has a keen intellect. He's not running for any
7 political office, I asked him. He doesn't seek attention; he
8 doesn't want to be a celebrity. The fact of the matter is, he's
9 uncomfortable in that type of a situation.

10 He's the kind of entrepreneur, the kind of small
11 business person you want here serving the citizens of this
12 state. He's genuine. He has a desire, and he's motivated for
13 one reason only: He wants to improve public education.

14 I have the right in the portfolio to say on
15 behalf of 6.2 million kids, I'm asking for your support of this
16 confirmation here today.

17 And Mr. Chairman, you've been extremely generous
18 with your time over the last several weeks, and I, too, want to
19 thank you for all of your time, and effort, and that of your
20 caucus members as well.

21 CHAIRMAN PERATA: Thank you, Jack.

22 Senator Bowen.

23 SENATOR BOWEN: Thank you, Mr. Chair.

24 First let me say, Mr. Hastings, that for me, this
25 is not about two-and-a-half hours of English. I'm neither an
26 expert in bilingual education nor the acquisition of English
27 language skills, nor have I had the experience of having to
28 learn English as a student.

1 But there's a whole host of issues, and that's
2 not definitive for me. So, I want to make sure that we don't
3 cast our discussion too narrowly.

4 Mr. Chair, I understand that typically the Rules
5 Committee has operated by having Members ask questions first,
6 then by hearing testimony.

7 For this Member, at least, I would find it far
8 more useful to hear the commentary and be able to ask questions
9 that are probably more sensible and avoid a lot of duplication
10 of unnecessary questions. If other Members want to ask their
11 questions now that would be great, but I would like to ask
12 permission to hear the testimony of those who've come before I
13 ask questions. Otherwise, I'm going to have questions that I
14 never get to ask. That's not a good learning experience.

15 SENATOR CEDILLO: It seems to me also that,
16 again, being new to the Committee, it seems to me that that's
17 probably, at least from my perspective, a way to get a fuller
18 picture, create some context.

19 CHAIRMAN PERATA: Do you mean listen to the
20 public?

21 [Laughter.]

22 SENATOR BOWEN: Yes, that's the proposal.

23 CHAIRMAN PERATA: Precedent setting, I would
24 imagine.

25 SENATOR BATTIN: I would imagine, since every
26 single Member of this Committee is new, then we can do this any
27 way we choose to. So, I will leave it to the Chair.

28 CHAIRMAN PERATA: Without objection, so ordered.

1 We've asked that those who are here in support of
2 Mr. Hastings --

3 SENATOR BATTIN: While they come up, I have a
4 question for Mr. Hastings, if it's okay.

5 CHAIRMAN PERATA: Did you act out in class when
6 you were a kid? Go ahead, ask your question.

7 SENATOR BATTIN: Yes, I was, actually.

8 I guess we'll have to figure this out as we
9 go, but I think that a lot of times it's helpful both ways.

10 CHAIRMAN PERATA: Sure. Ask your question.

11 SENATOR BATTIN: Mr. Hastings, you were confirmed
12 by the Senate on the 16th of February, 2001 by a vote of 29-0,
13 and 5-0 by this Rules Committee.

14 At the time, and maybe somebody can refresh my
15 memory here, had Prop. 227 passed before that or was it after
16 that?

17 MR. HASTINGS: Yes, it was before that. It was
18 in '98 or '97.

19 SENATOR BATTIN: Were you asked questions during
20 that hearing about 227?

21 MR. HASTINGS: I don't recall.

22 SENATOR BATTIN: Before redistricting came, so
23 basically until this last election, the district that I've been
24 privileged to represent had about at one point about 95 percent
25 of the California-Mexican border, and a very heavy population of
26 Hispanics.

27 When Prop. 227 passed, it passed overwhelmingly
28 in my area. Why is the question. Why is because, talking to so

1 many of the people I represented, it's real clear to them that
2 the immigrant families into in country know that English equals
3 opportunity for their children, that if they are monolingual in
4 Spanish, they might do okay. If they're bilingual in Spanish
5 and English, they actually will do better statistically than if
6 they're just monolingual in English. So, English equals
7 opportunity.

8 I've seen that from talking with people that I
9 represent, and I've also seen it politically in polling and in
10 campaigns in the area. And when you talk about it, it's 80
11 percent of the people say this is important.

12 You touched on it in your opening about bilingual
13 education. I would like to hear more about it, about why it is
14 so important that we really focus on making sure that our
15 children can read, write, and speak English in California public
16 schools?

17 MR. HASTINGS: Absolutely.

18 You know, the State Board's role is not to make a
19 law. That comes primarily by the Legislature, a little bit by
20 initiative, and we implement it. Sometimes there are things
21 that we agree, sometimes there are things that we don't agree
22 with, but we implement them.

23 The voters decided this issue substantially with
24 227, and we've been embarked on those efforts to support English
25 immersion. It's presumably part of why the results have been so
26 impressive over the last five years, and that's been very
27 successful.

28 Whether bilingual education works for some

1 children when their parents have decided specifically to do
2 that, that's a legal right. Whether we think it's the right
3 thing, the wrong thing, those parents have the legal right to do
4 that.

5 Our interest is to make sure that bilingual
6 education also teaches English. In that view, our view was
7 that half of the day, or two-and-a-half hours, grades one
8 through three, should be spent in English. And bilingual
9 programs that complied with that were then able to receive these
10 federal funds that we were administering.

11 And so, our view is, it's not for us to outlaw
12 bilingual education, especially if the parents have chosen it in
13 a waived program.

14 It is our view that the bilingual education
15 should also teach English. It is our view that that requires a
16 minimum of two-and-a-half hours of English a day to be able to
17 keep up in English. And that's a policy judgment that we made,
18 and ultimately, I believe, that has been the core of this issue
19 and the disagreements, which are legitimate policy
20 disagreements.

21 SENATOR BATTIN: I believe that it's the core of
22 this issue in the debate that we've had, certainly from the
23 letters that I have received.

24 We spoke in my office. You and I do not agree on
25 some issues. I do not agree with your stands on taxes and
26 lowering the threshold. And I have some folks in the charter
27 school industry that certainly have been contacting me as well.

28 But the fact of the matter is, I believe that

1 your tenure on the Board has been very good, and I think that
2 you have been very forthright in terms of what you want to
3 achieve.

4 I had the great pleasure of serving with our
5 Superintendent for -- when you were elected?

6 SUPERINTENDENT O'CONNELL: In 2002.

7 SENATOR BATTIN: For eight years in the
8 Legislature. The praise he spoke was wonderful, and I don't
9 think that he would do it if he didn't believe it. I really
10 don't. Jack's a really nice guy; he might say nice things, but
11 they wouldn't be directly, you know, Reed Hastings did this, he
12 did this, he did this.

13 That's something that you should be proud of,
14 that you get such a strong endorsement.

15 I think it's unfortunate that we've got to the
16 point that we have, especially in our first hearing, that on one
17 issue we're going to have, I believe, one interest group make
18 your confirmation very difficult, ignoring 90 percent of the
19 other things that you have done.

20 I'm going to reserve my right to ask other
21 questions as we go along with this, but I think you should be
22 confirmed, and hopefully the Committee will as well.

23 CHAIRMAN PERATA: Thank you.

24 I would ask those who are here, and I know some
25 of you came from long distances, to try to limit yourself to a
26 couple of minutes. Say something really pithy. Think about
27 getting it on a bumper sticker or in one of those newspapers.
28 That would be very helpful.

1 Yes, ma'am.

2 MS. ALI: I have written testimony in the
3 interest of being brief. My name --

4 MR. HASTINGS: If I could interrupt, Senator,
5 would it be okay if those who spoke who -- in the past I've been
6 a donor to many different things, and I think it might be
7 appropriate for those who have at times received donations to
8 just acknowledge that on the record.

9 MS. ALI: Absolutely. In fact, it's the third
10 full paragraph of my written testimony. Thank you very much.

11 My name is Russlynn Ali. I am the Director of
12 the Education Trust West, a statewide nonprofit advocacy and
13 research organization squarely focused on closing achievement
14 gaps, separating low-income Latino, African-American, and other
15 students of color from their more affluent and white peers.

16 Reed Hastings has evidenced a willingness to take
17 on the sacred cows of the right and the left. I believe that's
18 why this confirmation is so difficult today. He has brought a
19 seriousness of purpose and intellectual honesty to his work on
20 the Board that entitles him to consideration by the full Senate.

21 Do I always agree with him? Absolutely not, and
22 I call him on it loudly and publicly when I think he's wrong. I
23 don't think that's going to change.

24 But today we should not allow political
25 disagreements to override facts. The facts are plain and they
26 are strong. Reed Hastings' leadership in California has meant
27 that we finally disaggregate data, allowing assessments to our
28 world-class standards, and have created and continuously worked

1 to refine an accountability system that measures all students'
2 progress over time and holds adults accountable for student
3 learning for the first time in our history.

4 Finally, allowing instructional materials and
5 supports in English and Spanish are getting to students who need
6 them most for the first time. Finally we're making some strides
7 on teacher quality and teacher preparation.

8 Are all of these tools perfect? Are all of these
9 policies exactly what I and rest of the Education Trust staff
10 think are the absolute best they can be? Of course not. The
11 API system is deeply flawed; the distribution of talented and
12 well-trained teachers in this state is an embarrassment. We
13 need more money for our schools, and that money needs to be
14 spent more wisely.

15 But the point here is that under Reed's stead,
16 California held the line on standards and expectations at a time
17 when seemingly everyone from both sides of the aisle argued the
18 standards should be lower for some, that we shouldn't, couldn't,
19 expect the same for these kids, especially those learning
20 English, as we do for their peers.

21 With this much at stake, the decision ought to be
22 made by and before the full Senate. Today should not be about a
23 referendum on bilingual education, but even if it is, especially
24 if it is, the issue is one for the full Senate to decide.

25 The truth is, low-income students and students of
26 color, especially those struggling to learn English, have
27 suffered from decades of low expectations and from an
28 unwillingness to honestly acknowledge and confront issues

1 affecting them. These students have also borne the cost, the
2 brunt, of partisan and intraparty recriminations and
3 retributions, leading to deadlock on many of the things that
4 matter most to them.

5 Under Reed Hastings' leadership, as a result of
6 Reed Hastings' leadership, that's changing. Why on earth would
7 we turn back the clocks, especially when the data bear out that
8 we're moving in the right direction? We are just starting to
9 see real results.

10 Finally, in an era where California seems caught
11 in an endless struggle to get out of its state of the inertia,
12 we need unconventional thinkers who are willing to challenge the
13 status quo. We, you, and most importantly the children of this
14 state have that in Reed Hastings.

15 It is a shameful and, quite frankly, destructive
16 move to prevent his appointment and confirmation process from
17 moving forward.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MR. BARB: Good afternoon. I'm Steve Barb, CEO
21 and founder of Green Dot Public Schools, charter high schools in
22 Los Angeles.

23 I live in a city where the average freshman class
24 of a high school in Los Angeles in a public school is 1500. In
25 the same schools, the average senior class is 500, and this goes
26 on consistently year after year, with very few answers.

27 I'm a life-long Democrat and a product of a once
28 proud Master Plan public school system. I was able to jump a

1 class in that. Most of my adult life, the debate has been --
2 how to fix public schools has been, one side says, "Give us more
3 money," and the other side, "Just scrap them." That's really
4 the past's debate.

5 Five years ago I met Reed Hastings at an event
6 for President Clinton. He talked about charter schools and
7 maybe trying some new things. I think charter schools at their
8 finest are great research and development of what could be in
9 public schools.

10 I decided to create the greatest high school Los
11 Angeles, and the highest in an area which has the highest need
12 for high schools. In fact, when I started reading about public
13 schools, the L.A. Unified School District hadn't built a high
14 school, a comprehensive high school, since 1971, while the
15 population had tripled in those 30 years.

16 Under our leadership, charter high school serves
17 the population of Lennox. Lennox is a two square [sic],
18 unincorporated section of Los Angeles. It's 98 percent Latino,
19 90 percent under the poverty line, 92 percent underinsured, and
20 90 percent English as second language.

21 And traditionally, 70-80 percent of those kids
22 who drop out are in normal public schools, Hawthorne High
23 School.

24 We started with a class of 140. Took the same
25 dollars and the same kids. We know from those eighth grade test
26 scores that those kids come in are tested exactly the same as
27 where they would have went. In four years under this charter
28 school law, 123 of the 125 kids left graduated, 66 percent of

1 them in four-year schools.

2 That school would not be here without Reed
3 Hastings. That school would not be here without SB 740, which
4 gave tax relief and lease relief for us to be able to afford the
5 rent in that place. We wouldn't be there, and we wouldn't be
6 able to build it as a permanent home on that site side Prop. 47.
7 All these things are Reed Hastings' legacy.

8 Since the opening of Anima Leadership Charter
9 High School, we've now created Animo Inglewood, Oscar de la Hoya
10 Animo in Boyle Heights, by the way, the first public school
11 built in Boyle Heights in 76 years. The Jewish community the
12 last time there was a public school built in Boyle Heights.
13 Animo South L.A. in the shadows of Washington Prep, and Animo
14 Venice. All of these schools, and their accomplishments, and
15 they're 10 out of 10 on APIs and they're surrounded by one out
16 of 10s, would not be there.

17 I feel a little bit like Clarence the Angel in
18 "It's a Wonderful Life," talking about all the lives that Reed's
19 work has touched.

20 So, I just think that at this time and place, we
21 need not one Reed Hastings, we need hundreds of thousands of
22 Reed Hastings to step up and make public education the top
23 priority.

24 I'm ashamed today to be a Democrat. I'm a Pat
25 Brown Democrat. I jumped a class because of the great public
26 school system in this state. To have to come up here today and
27 convince Democrats that this is a good thing is really
28 embarrassing.

1 I hate to leave on a somber note. I appreciate
2 the support and, hopefully, you will, too, for this great
3 educator.

4 CHAIRMAN PERATA: Thank you.

5 MR. AREVALO: Hello and good afternoon. This is
6 my first time here, first time in Sacramento. I flew all the
7 way from -- well actually I was introducing myself first, then I
8 was going to -- My name is Luis Arevalo. I'm a senior at Animo
9 Leadership Charter High School.

10 Like I said, this is my first time in Sacramento
11 from Lennox. So, I grew up in the area which most of you guys
12 are talking about, English learners as a second language. I
13 grew up in the area in which I am directly affected by all of
14 the decisions that you make.

15 And when it comes to education and No Child Left
16 Behind, I'm not very familiar with politics because everything's
17 usually simpler when you're younger. But one thing is for sure,
18 California has always been known for its great public schools.

19 And I, in my community, I would attend a middle school,
20 Lennox Middle School, where the capacity, the most it could
21 contain would be 2,000 students, and yet it would be crammed
22 with a little over 5,000 students. So, I would perform at a
23 mediocre level if I wasn't given the opportunity, the attention,
24 more of the resources to actually shine and make something great
25 of myself.

26 But when I met Mr. Barb and Green Dot, I got the
27 opportunity to attend a small class, get attention, and actually
28 be able to learn, to better myself, to be the first in my family

1 of seven, an immigrant, undocumented family, to graduate high
2 school, to provide something better for the future of my younger
3 siblings, for my cousins, and for my generation overall.

4 So, what I'm trying to say is, I'm here as
5 testimony to what this man right here has done because he has
6 set a standard that provides everyone the opportunity to say,
7 "Look, we want to do something great with our kids, and we can't
8 do it unless we help them out."

9 And I believe that education is important.
10 Without education we can't have any type of reform, any type of
11 great economy, or any type of great success that California
12 deserves.

13 For my generation, that has always been our
14 struggle, to achieve this level of performance of expecting
15 nothing less but the best.

16 Thank you.

17 CHAIRMAN PERATA: Thank you. Excellent,
18 wonderfully stated.

19 Who wants to follow him?

20 [Laughter.]

21 MR. MARTINEZ: Good afternoon. I'm George
22 Martinez.

23 Mr. Chair, Members of the Committee, thank you
24 for the opportunity to address you.

25 The California Federation of Teachers supports
26 the confirmation of Mr. Reed Hastings to the State Board of
27 Education.

28 I would like to give you some additional reasons

1 along with what has been presented all ready. I'd like to tell
2 you some stories of what Mr. Hastings has done at the local
3 level in my community of Santa Cruz.

4 Mr. Hastings has been a true friend of public
5 education. He supported our district's efforts to raise revenue
6 to offset reductions due to declining enrollment, which is
7 plaguing most of the coastal districts.

8 With his help, we were able to pass three, mind
9 you three, powerful tax measures. These measures have helped
10 maintain vital services to our students such as: counselling
11 services, school libraries staffed with certificated library
12 media teachers, music and arts programs in our K-8 classrooms,
13 and class size reduction for our K-3 classrooms.

14 I want to point out that these resources account
15 for \$3.25 million out of a budget of \$53 million.

16 Mr. Hastings also helped our district pass two
17 bond issues that brought us \$86 million in funding to improve
18 our schools.

19 At the state level, Mr. Hastings played a
20 critical role in reducing the threshold for passage of bond
21 measures from the two-thirds majority to a 55 percent majority.

22 Finally, last year in our district we became
23 aware that 165 students would not graduate because they had not
24 matriculated in one course. We requested a waiver to this
25 requirement from the State Board of Education while Mr. Hastings
26 was President. I would like to point out that the students not
27 matriculate not because they decided not to, but because our
28 administration failed to inform parents and students of that

1 requirement essentially in order to attain a diploma.

2 Mr. Hastings sided with Santa Cruz City Schools
3 and helped the rest of the Board see the necessity to grant this
4 waiver. I want you to know that I monitor the State Board of
5 Education, and almost never is a waiver approved that has to
6 deal with any of that kind of liability measures that are in
7 place. This made it possible for -- of course, the waiver was
8 approved. You probably read all about it.

9 Other districts followed suit, followed the lead
10 of Santa Cruz City Schools, and this resulted in over 14,200
11 students receiving a diploma across our state. And in Santa
12 Cruz, as I imagined this might be the case throughout the state,
13 primarily these were students from the resource program, and
14 many of them were also English language learners.

15 Mr. Hastings is a dedicated -- has dedicated a
16 great part of his life to the improvement of public education,
17 and the California Federation of Teachers supports the
18 confirmation of Mr. Hastings to the State Board of Education.

19 Thank you very much for giving me this
20 opportunity.

21 CHAIRMAN PERATA: Thank you, sir.

22 MR. THOMAS: Good afternoon. My name is Glen
23 Thomas, Executive Director of the California County
24 Superintendents Association.

25 Mr. Perata, the only bumper sticker I could think
26 of is maybe "More Kids Read Thanks to Reed." It doesn't have a
27 snap to it, so I won't use it.

28 Members, I grew up in Los Angeles. I started my

1 teaching career in migrant education. For 30 years as an
2 educator, I've devoted myself to improving our education system,
3 which I think is the backbone of our economy and our democracy.

4 What do we expect in local board members and in
5 State Board members? People who are thoughtful, who are
6 studious, and who will listen. We don't have to agree with them
7 on every issue.

8 Besides, Mr. Hastings not only has those
9 characteristics, his leadership has been exemplary on the State
10 Board of Education.

11 We would urge your confirmation. Thank you.

12 CHAIRMAN PERATA: Thank you, sir.

13 MS. YOUNG: Hi. My name is Caprice Young. I'm
14 the CEO of the California Charter Schools Association and
15 represent the 512 charter schools in the State of California.

16 But previous to this, I was also the President of
17 the Board of the Los Angeles Unified School District, and so
18 I've known Reed Hastings in both of those contexts.

19 I'd like to say first of all that I often
20 disagree with Reed Hastings. As the head of the charter school
21 movement, I represent schools some of which teach their students
22 predominantly in Chinese, in Spanish, in Korean, and even German
23 in San Diego. And I believe strongly in their right to be able
24 to have a diverse curriculum, but I strongly agree with Reed
25 Hastings that we have to have the very highest standards for our
26 students, and that even schools that are choosing quite unusual
27 methods of teaching have to have strong outcomes for students.

28 And Reed Hastings has been a tireless supporter

1 of making sure that every single student can learn, and
2 addressing the barriers when they can't. And one of the big
3 barriers that we face in Los Angeles is the lack of space. I
4 can tell you that because of this man sitting right here,
5 150,000 students that didn't have a place to sit in Los Angeles
6 will now have schools to go to. And everywhere you go in the
7 overcrowded neighborhoods, you can't go a few blocks without
8 seeing where the steel framing's going up and new schools are
9 being built efficiently and effectively for all of those
10 students.

11 So just to be brief, the Charter Schools
12 Association and I urge you to support Mr. Reed Hastings.

13 Thank you.

14 CHAIRMAN PERATA: Thank you.

15 MR. HAWLEY: Mr. President, distinguished Members
16 of the Committee, Jim Hawley of Tech Net. We're 150 of
17 America's leading technology companies, many based in
18 California.

19 We have a very strong -- we believe that
20 California's economic competitiveness, the opportunity for our
21 children, depends very heavily on the success of our public
22 education system. We believe that Mr. Hastings has been a very
23 -- played a very important role in the progress that we've made
24 in the last few years in California.

25 We urge your support for confirmation of this
26 nomination.

27 CHAIRMAN PERATA: Thank you, sir.

28 MS. BALL: Thank you. Andrea Ball, Long Beach

1 Unified School District, in support of Mr. Hastings.

2 His commitment to high standards for all students
3 is something that we firmly agree with. It's part of our
4 mission statement. He's come down to our district and sat in a
5 room for several hours with our district assistant
6 superintendents and directors, and engaged in very frank and
7 open discussions.

8 We don't agree necessarily with everything the
9 State Board does, but Mr. Hastings' commitment to standards,
10 improving the testing system -- you heard about that -- and the
11 quality of information, it's not maybe a real sexy topic, but
12 without good data to track what our students are doing, we can't
13 really improve instruction and help our students learn.

14 We support his confirmation. Thank you.

15 CHAIRMAN PERATA: Thank you.

16 MR. GILL: Mr. Chairman, Members of the
17 Committee, my name is Ricky Gill. I serve as student member on
18 the State Board of Education.

19 It's an honor not only to call Mr. Hastings, or
20 Reed as we call him, not only a colleague but also a friend.

21 I come here as the representative of 6.3 million
22 students. And I can say with great conviction that they derive
23 a great deal of benefit from his work on the State Board.

24 I know there have been many Senators up here, not
25 just Members of the Committee, who have said very strongly and
26 very firmly that this issue is not about English language
27 learners. But to be very truthful, I really feel it is.

28 There are 6.3 million students, 25 percent of

1 which are English language learners, and to be very truthful,
2 this debate should be centered around them because this is why
3 there's stubborn opposition to Reed's confirmation.

4 I believe firmly, just like Reed, that English
5 equals opportunity. And English language is very critical to
6 understanding that to gain access to the great benefits of our
7 society, and to move forward, and social mobility is very
8 contingent upon that, and it's an act of compassion for us to
9 support these English language learners as they continue to
10 grasp the language. It's an act of support, not obstinance.

11 I'm not here to tell you what to do, because you
12 frankly are representatives of our society. I appreciate your
13 service.

14 Senator Perata, you've made our streets safer.
15 Senator Bowen, you've advocated for consumers. I mean, I know a
16 lot about your past; I really respect you as Legislators, and
17 personally you've accomplished much.

18 But I think we all know what the right decision
19 is here. The right direction is to confirm Reed Hastings as an
20 advocate of students because there are so many students out
21 there that wouldn't be able to have the opportunities that they
22 do in our society if it weren't for his proud, dignified, and
23 honorable leadership.

24 And it is very humbly that I ask for Reed
25 Hastings' confirmation, not for himself, not the members of the
26 Board, but for those 6.3 million students that we all represent
27 as our core constituency, as advocates of public education, none
28 of them stronger than Reed Hastings.

1 Thank you.

2 CHAIRMAN PERATA: Where do you go to school?

3 MR. GILL: Tokay High School in Lodi, sir.

4 CHAIRMAN PERATA: High school.

5 MR. GILL: High school. I'm 17 years old.

6 I myself am coming before this Committee next
7 month for confirmation.

8 [Laughter.]

9 MR. GILL: And I really respect Reed, and I
10 respect all of you.

11 Senator Perata, Mr. Chairman and Members of the
12 Committee, I think we all know what the right decision is here.
13 And let's not shy away from principle.

14 I myself am in an AP government class. And just
15 to give you an idea, we're learning about representative
16 democracy and how the framers of our Constitution wanted to put
17 this program into place so that liberties could be respected.

18 And what do we need to respect here? The right
19 of students to an education. I am that voice up here in
20 Sacramento. Students don't have organized representation; other
21 groups do. That's my job, to represent them.

22 It's a heavy burden, but Reed and I and my fellow
23 Board members, we've done a terrific job in doing just that
24 because of principled leadership which has come from Reed
25 Hastings.

26 And I can tell you one thing right now. That is
27 that students don't have their eye on this confirmation hearing.
28 There aren't cameras in here for students to be watching around

1 the state.

2 But we need to make that decision, whether or not
3 we're in their shadow or not. People will some day realize the
4 decisions that we make here today and the ramifications.

5 We all know what that right decision is, so let's
6 do it in order to honor our constituents.

7 CHAIRMAN PERATA: Thank you.

8 MR. GILL: Thank you.

9 CHAIRMAN PERATA: Please be back on February 2nd.

10 MR. CIMA: Good afternoon, Mr. Chairman. It's a
11 tough act to follow.

12 I'm Dennis Cima, the Education Director of the
13 Silicon Valley Manufacturing Group.

14 I come before you both with a letter you've
15 probably all ready seen from both the Silicon Valley
16 Manufacturing Group and Tech Net, from whom you've heard, ITAA,
17 the Silicon Valley Chamber of Commerce, and the American
18 Electronics Association. I come here representing SVMG and the
19 200 employers in Silicon Valley, one of which for the sake of
20 public disclosure is NetFlix, the President and Ceo to my left.

21 The Silicon Valley Manufacturing Group is very
22 supportive of Mr. Hastings and his confirmation. We believe
23 he's someone who's not afraid to raise the level of debate when
24 it comes to students achieving.

25 I want to echo what was said by Mr. Hawley, and
26 as well Superintendent O'Connell, that Mr. Hastings is an
27 innovator. He puts students first.

28 And please, please support his confirmation and

1 move it to the Senate Floor.

2 Thank you for your attention.

3 CHAIRMAN PERATA: Next speaker.

4 MR. CABALDON: Mr. Chairman, I'm Christopher
5 Cabaldon. I'm the President of Ed Voice. I guess I'll be the
6 only one to follow Reed's admonition and acknowledge that he's a
7 member of our Board of Directors.

8 I don't want to repeat anything that's been said
9 previously, so I just want to cut to the chase.

10 In the remaining months on Mr. Hastings' term if
11 he is confirmed today, the major issues facing the State Board
12 of Education in the State of California and our kids aren't
13 going to be about bilingual education; they're not going to be
14 about the issues that have been before you in the past. Those
15 have largely been preempted by this Legislature.

16 The real danger that we're facing is two-fold.
17 First is an immediate one. No Child Left Behind is going to
18 bring us now 280 and then 1,000 schools in California, and then
19 thousands more that are going to be under very severe sanctions
20 in a system that is managed tightly by the State Board of
21 Education. There has been no time in our history where we need
22 a strong, capable, competent, credible State Board of Education
23 more so than today. And so, we can't afford to weaken and erode
24 the leadership that Mr. Hastings has provided on the State Board
25 as we enter this very difficult period under No Child Left
26 Behind.

27 But more importantly, Mr. Hastings provides
28 inspiration to progressive business leaders in the State of

1 California who want to get engaged, or who realize that they
2 should be engaged in making schools better for our kids; that
3 get beyond the notion that if we just ran schools like a
4 business, everything would turn out okay. But who have been
5 inspired to step up and support their local schools, support
6 major changes in state policy. Who watch somebody who doesn't
7 just put his money behind what he's doing, but a heck of a lot
8 of time, listening, going to conferences and meetings, State
9 Board meetings that seem to go on forever, but really
10 understanding and learning the issues, and the variety of
11 perspectives and the variety of views in California that are
12 necessary to make it happen.

13 And an inspiration to community activists, to
14 leaders, to optimists in our state who think that things can get
15 better, people like Steve Barb and the thousands of people like
16 him across California who watch somebody like the CEO of NetFlix
17 step up and do all of this, and say, if he's doing that, running
18 one of the most volatile, most dynamic companies across the
19 country, certainly I can spend a little bit of time, and risk a
20 little bit of hope in making schools better in my own community.

21 So, I know there's an interest in finding
22 somebody that has 100 percent agreement on every issue. The
23 State Board members cast thousands of votes a year, just like
24 Members of the Legislature. There isn't going to be anyone with
25 whom everyone has 100 percent agreement.

26 But this is a man who's provided integrity,
27 leadership, and inspiration for folks across this state, and has
28 made it clear that he's allergic to fads, and allergic to

1 ideologies, and that our schools and our kids are too important
2 to leave, leave to those ideologies.

3 So, on behalf of Ed Voice, I'd like to urge this
4 Committee to move forward the nomination and support the
5 confirmation of Reed Hastings.

6 CHAIRMAN PERATA: Thank you.

7 We're going to take a little break so that her
8 fingers don't fall off.

9 Oops, one more.

10 MR. KHADEMI: Senator Perata, my name is Monib
11 Khademi. I was not planning on testifying on behalf of
12 Mr. Hastings.

13 We come here -- I'm a trustee in The Valley
14 School District. I've been on the school board in Mill Valley
15 for the last ten-plus years, and I co-chair an association of
16 trustees and superintendents from Marin County, which is the top
17 performing school district in California.

18 I'm not speaking on their behalf. I'm speaking
19 on my own behalf as a naturalized citizen and an educator, and
20 more importantly, as a parent.

21 I do have a question for you before I speak in
22 support of Mr. Hastings, which question is, would any of you on
23 this Committee change your minds based on anything that you hear
24 from anyone who testifies today on behalf of Mr. Hastings? Is
25 there anything that you could hear that would make you change
26 your mind?

27 SENATOR ASHBURN: I'll answer the question,
28 because I think I've been asked that question publicly, and this

1 is probably as good a time, Mr. Chairman, if I may be allowed,
2 to make a statement with respect to the way in which I will
3 conduct myself as a Member of the Rules Committee.

4 That is that I do not intend at any time to ever
5 announce prior to a hearing, whether it's a confirmation or any
6 other matter subject to a public hearing before this Committee,
7 to announce my intention to vote.

8 And the reason for that, based on my experience
9 as county supervisor and Member of the Assembly, and now the
10 Senate, is that the purpose for public hearings is to hear
11 information. I want to hear all the information, and I reserve
12 the right to change my mind once, twice, or many times during
13 the course of a hearing.

14 So, my mind is not made up, and I would certainly
15 give it an affirmative to your question, that I would change my
16 mind if I heard information that was compelling.

17 CHAIRMAN PERATA: Well stated.

18 MR. KHADEMI: Thank you very much. I accept that
19 on behalf of the Committee, and I will assume that other Members
20 of the Committee are open too, and that's the least they would
21 be able to offer the members of your public and the people at
22 whose discretion you serve, to be able to be open to hearing
23 from us.

24 So, with that opportunity, then I speak on behalf
25 of Reed's nomination and in support of him.

26 As a member of a local school board, as a parent,
27 I've had to deal with the results of some of the decisions that
28 the school board has made, and like many of the other speakers,

1 I'm not in full agreement with everything that he's done or the
2 State Board of Education has done.

3 However, we do need people who are committed to
4 public education in California, and we do need as a legislative
5 body to be able to support and endorse people who make
6 educational decisions, and not have those decisions based solely
7 on political considerations.

8 So, an earlier speaker, I think the first lady
9 who spoke, said that this would be a shameful day. While I
10 appreciated that, I do not wish to repeat that statement.

11 But on behalf of our students, I think it is
12 very, very important, given the state of public education in
13 California, for all of you, I assume, have seen the Rand Study
14 where we have come in at 48. We are above Louisiana and
15 Mississippi.

16 Public education, to continue to have people of
17 the caliber of Reed involved in public education, most of us are
18 volunteers. We are volunteers as public citizens; we are
19 committed to education of our children.

20 So, as you look at whether -- in what way to
21 vote, I urge you to vote with having the future of our children,
22 our students, and the future of our state and country and the
23 world in mind.

24 I'm also not seeking a public office. I'm a
25 public servant, and this is my last term as a public school
26 board member. However, I think it is so important, despite the
27 difficulty of coming here and speaking to you, because I do not
28 have prepared comments, but I think it is so important for you

1 to hear the sentiment of also parents of children when you've
2 heard of parents and from other officials.

3 So, as a citizen of this state, I urge you to
4 support Reed.

5 Thank you very much for the opportunity, and
6 thank you very much for listening.

7 CHAIRMAN PERATA: Thank you for coming up.

8 We'll take a five-minute break.

9 [Thereupon a brief recess was taken.]

10 CHAIRMAN PERATA: The Committee will reconvene.

11 I'd like now to call anyone here who is in
12 opposition to the confirmation, once again with the admonition
13 to be as poignant and as succinct as possible.

14 MS. ZARAGOZA-DIAZ: Good afternoon, Senator
15 Perata and Members of the Committee. My name is Martha
16 Zaragoza-Diaz, and I am here representing the Californians
17 Together Coalition, which is a coalition of parents, teachers,
18 education advocates, and civil rights groups committed to
19 securing equal access to quality education for all children.

20 I urge you to please listen to the individuals
21 that will follow me in regards to our reasons for opposing
22 Mr. Hastings. It is not only on the 2.5 hours of English.
23 That's not the only issue why we are opposing Mr. Hastings.

24 But we are here today to voice our opposition to
25 Mr. Hastings, to another four-year term on the State Board of
26 Education.

27 The flurry of newspaper articles and editorials
28 these past several days would have you believe that Mr. Hastings

1 has narrowed or closed the achievement gap of all students, and
2 this would include English learners, and that he has provided
3 the resources to do so.

4 Nothing is further from the truth. The academic
5 achievement gap of English learners persists. Recent studies,
6 and I want to emphasize this, there are many studies from
7 researchers not affiliated with our organization, and not paid
8 by our organization, such as the Legislative Analyst's Office,
9 such as researchers from the University the California system,
10 that have written about the academic achievement gap of English
11 learners.

12 Recent studies, such as the 2004 study by James
13 Grissom, who is a consultant with the California Department of
14 Education, has a study on the redesignation of English learners
15 which points to a widening achievement gap. This is the only
16 longitudinal study that has followed English learners and
17 English-only students over a period of four years. Three
18 different cohorts of students were followed -- I'm sorry, were
19 followed for three years, from 1998 to 2003, and for each of
20 these there was no achievement gap closure. In fact, the
21 achievement gap grew.

22 How can the Board address the mandates of the No
23 Child Left Behind when Hastings continues to refuse to believe
24 this data, and when he continues to ignore this data?

25 One out of every four students in our classrooms
26 is an English learner. Close to 1.6 million students are
27 learning English while mastering California's academic contents
28 standards.

1 Our concern is for all of these students, not
2 just the 126,000 students that are enrolled in our bilingual
3 classrooms. It is critical that members of the board have a
4 track record of being objective, of listening openly and without
5 bias to all sides of an issue. Members of the Board should have
6 the courage, the independence, and the leadership to be able to
7 step back and reassess whether current policies and reforms are
8 working for all students, including English learners.

9 Most importantly, members of the Board should
10 have the philosophy of providing every student with the
11 opportunities to excel academically and to provide them and
12 their teachers with the resources and the best tools necessary
13 to make this happen.

14 Mr. Hastings does not understand the simple
15 concept that when two first graders sit side-by-side in the same
16 classroom, one speaking English fluently and one not
17 understanding one word of English, providing each student with
18 the same exact lesson, using the same exact materials, does not
19 work. Students who speak a language other than English need
20 direct, explicit instruction to learn English as well as lessons
21 to learn math, science, and the full core curriculum.

22 For the first time in over 20 years in
23 California, there are no state-adopted materials to teach
24 students English. Students are struggling -- and I'm talking
25 about English learners -- are struggling to learn English, and
26 teachers are struggling with instructing them the best that they
27 can with the limited materials that they have.

28 English learners and their teachers know that

1 learning in English is not the same as learning English.
2 Mr. Hastings has shown by his actions his bias against English
3 learners, especially those in alternative bilingual programs,
4 and his bias towards their parents. His actions have hindered
5 parents from making choices available to them under law
6 regarding the educational instruction of their children.

7 His decisions have limited the availability of
8 resources and the most effective tools for English learners.

9 Last but not least, Mr. Hastings and, under his
10 leadership, the Board selectively choose which laws to disregard
11 and utilize mechanisms such as the issuance of underground
12 regulations for that purpose. Their Reading First program
13 illustrates this point quite well. A very expensive lawsuit, an
14 action by the Legislature and Governor, blocked Mr. Hastings and
15 the Board from proceeding with these underground regulations and
16 forced them to do what the law clearly required in the first
17 place.

18 This is not about ethnocentrism. This is not
19 about debating Prop. 227 again.

20 This is about equity. This is about parent
21 choice. It is about supporting parent choice, whether it's
22 parents wanting to put their children in charter schools,
23 whether parents want to home school their children, or whether
24 parents who have gone through the waiver process want their
25 children to be in bilingual classrooms as is allowed under
26 current law. It is about complying with all provisions of the
27 law.

28 This is about closing the achievement gap of

1 English learners. It is about providing the resources and the
2 most effective tools and appropriate tools to English learners
3 so they can acquire English, so they can prepare for the tests
4 they are required to take, and so they can achieve
5 academically.

6 Our students, our English learners, and our
7 parents do not have access to the editorial boards nor the
8 newspapers as does Mr. Hastings and Superintendent O'Connell.
9 We have written many Letters to the Editor; we have forwarded
10 many op. ed. pieces to newspapers and have yet to see one
11 published.

12 Nor do our English learners or their parents have
13 the resources to take out the paid advertisement that is in the
14 Sacramento Bee today. But I can tell you that our English
15 learners and their parents do not see themselves in this
16 picture.

17 It pains me to hear that Mr. Hastings -- it pains
18 me to hear that we are ignoring 90 percent of the good that has
19 been done by Mr. Hastings. That's not the issue. Is the
20 message being said here that the 10 percent of the issues that
21 deals with English learners should be ignored? We think not.

22 We think that the members of the Board of
23 Education should represent all students, including English
24 learners and those in bilingual classrooms.

25 We believe that the Governor has eleven more
26 members to appoint to the Board, and he has ample opportunities
27 for other members.

28 This is why we oppose Mr. Hastings to the State

1 Board of Education.

2 Thank you.

3 CHAIRMAN PERATA: Senator Battin has a question.

4 SENATOR BATTIN: I do.

5 Your statement was very strong and the
6 accusations that you made. I just have a question.

7 You were talking about during the time that Mr.
8 Hastings has been to the State Board of Education, the English
9 learners have not seen an increase in their test results.

10 I'll ask you three questions. One, are you
11 saying that the testimony that Mr. Hastings had at the
12 beginning, when he talked about the advances and the improvement
13 in the test scores; number two, followed up by the
14 Superintendent of Public Instruction, who talked about the very
15 same thing; and three, the '98-2002 SAT-9 results we have for
16 California here were showing the English learners increasing
17 fourth grade, 122 percent, sixth grade, it's just on and on. I
18 think the lowest one is 40 percent increase in ninth grade math,
19 is wrong?

20 MS. ZARAGOZA-DIAZ: It doesn't show all of the
21 picture, Senator.

22 I have copies of the data in the James Grissom
23 report that I've made available. I have copies here for you to
24 take a look at.

25 This report is more accurate because, again,
26 we're looking at a longitudinal study of English learners over a
27 period of three years. We're looking at the same group of
28 English learners followed over a period of three years. Not a

1 year-to-year report of different English learners.

2 SENATOR BATTIN: This is from '98 to 2002; it's
3 for four years. It's not three years. It's a longitudinal
4 report -- no, I'm sorry. The state SAT 9 scores are four years.

5 MS. ZARAGOZA-DIAZ: But it doesn't -- it follows
6 different -- it follows different English learners. It's not
7 the same -- you don't get the same accurate information as you
8 do from a longitudinal study.

9 SENATOR BATTIN: I would imagine it follows all
10 English learners. And I don't know what this study does, but
11 I'm going by the State Board of Education, the Superintendent's
12 numbers, these are all students in California, versus I don't
13 know who he followed in this study at all.

14 MS. ZARAGOZA-DIAZ: He followed all of the
15 English learners.

16 SENATOR BATTIN: Then I'd imagine their numbers
17 should be the same.

18 MS. ZARAGOZA-DIAZ: Well, that's where the
19 disagreement is, and that's where the rub is.

20 That's why we're saying that we should have the
21 ability to be able to discuss these issues, and for Mr. Hastings
22 not to ignore the data, other data that shows that there is an
23 academic gap.

24 SENATOR BATTIN: I'm just --

25 CHAIRMAN PERATA: Maybe get that at the end of
26 the other questioning.

27 Thank you.

28 MS. ZARAGOZA-DIAZ: Thank you.

1 CHAIRMAN PERATA: Her comments were analogous to
2 Jack O'Connell's in terms of the opening. I'd ask everybody
3 else to be a little briefer.

4 MR. ZAHRADKA: Good afternoon. My name is James
5 Zahradka. I'm an attorney with Public Interest Law Firm in San
6 Jose.

7 I was counsel to concerned parents and
8 organizations in the Pazmino litigation concerning the 2.5 hours
9 requirement. I believe you have a letter that I wrote, and I
10 don't want to be unnecessarily duplicative of that.

11 CHAIRMAN PERATA: We do have your letter.

12 MR. ZAHRADKA: So, I agree with the Chair and
13 Senator Bowen that this is not an issue -- the issue for us is
14 not about bilingual ed. What we saw in that case were two
15 fundamentally flawed actions by the Board under Mr. Hastings'
16 leadership.

17 One was, they created a policy that was
18 unsupported by the No Child Left Behind Act, unsupportable under
19 the No Child Left Behind Act. He said earlier that their job is
20 to implement policy, not set policy. That's exactly what they
21 did there. They set a policy that was not consonant with No
22 Child Left Behind. That law specifically aims Reading First
23 ones at English learners, but their policy denied it to all the
24 children in alternative bilingual classrooms.

25 And secondly, and perhaps even more disturbing,
26 because reasonable people can differ about the merits of various
27 educational philosophies, was that they did it behind closed
28 doors in an underground regulation fashion, as you've all ready

1 heard. The judge in San Francisco tossed out the regulation
2 based on that. They decided, rather than go through the normal
3 regulatory process after that rebuke, they decided to create an
4 emergency regulation where no emergency existed and again
5 circumvent much of the public notice and comment.

6 I'm afraid that Mr. Hastings has an aversion to
7 the light of public scrutiny. It's not what we need in our
8 public servants, not appropriate. He should not be reappointed.

9 And I will also add that they didn't even seek
10 reconsideration or appeal of the judge's decision, that they did
11 promulgate it in an underground regulation, which makes one
12 wonder whether they thought there was any defensible grounds for
13 it. I guess not.

14 In order to keep it short, that's really all I
15 will say, unless there are questions from the Committee.

16 CHAIRMAN PERATA: Yes, Senator Cedillo.

17 SENATOR CEDILLO: With respect to your lawsuit,
18 essentially you allege that the Board of Education was in
19 noncompliance; correct?

20 MR. ZAHRADKA: Yes.

21 SENATOR CEDILLO: Prior to you bringing the
22 lawsuit, was notice provided to the Board of the position of the
23 families and the representatives of the students that they were
24 in noncompliance?

25 MR. ZAHRADKA: Yes.

26 SENATOR CEDILLO: How was that done?

27 MR. ZAHRADKA: In a demand letter to the State
28 Board.

1 SENATOR CEDILLO: Was there any other manner in
2 which that was done?

3 MR. ZAHRADKA: I'm not sure, not that I know of.
4 But it was a letter saying that you should change this; we think
5 it's illegal for these reasons; if you don't, we will sue you.

6 SENATOR CEDILLO: What was the response of the
7 Board to the demand letter?

8 MR. ZAHRADKA: I don't believe we had any
9 response.

10 SENATOR CEDILLO: What is the effect of
11 noncompliance of the Board with respect to this matter?

12 MR. ZAHRADKA: Well, as I say, there are sort of
13 two aspects of noncompliance. One is, they didn't comply with
14 the Administrative Procedures Act, and the other is --

15 SENATOR CEDILLO: A procedural breach.

16 MR. ZAHRADKA: A procedural breach, right, the
17 underground regulation aspect. And then there's a substantive,
18 the substantive noncompliance with the No Child Left Behind Act,
19 and also other civil rights statutes we alleged in our
20 complaint.

21 SENATOR CEDILLO: So, these students had a
22 fundamental right, unfettered, unimpaired right, to these funds;
23 is that correct?

24 MR. ZAHRADKA: You could characterize it that
25 way, yes.

26 MR. HASTINGS: You might want to clarify that
27 it's an application procedure.

28 MR. ZAHRADKA: Oh, I've been asked for a

1 clarification.

2 By the way, this is a little uncomfortable, the
3 situation here. I guess it's confronting one's accuser.

4 CHAIRMAN PERATA: Welcome.

5 [Laughter.]

6 MR. ZAHRADKA: In court at least we have two
7 tables.

8 SENATOR CEDILLO: There is a procedure. Somebody
9 applies and --

10 MR. ZAHRADKA: Yes, that's right. And that there
11 are a limited number of funds, and the schools apply, and it's a
12 competitive process. But within those --

13 SENATOR CEDILLO: The conditions, though. This
14 whole question of the demand for compliance was around the 2.5;
15 is that correct? It was a condition that was not explicitly
16 stated in the law; is that correct?

17 MR. ZAHRADKA: Not only that, but as I say, that
18 this requirement was contrary to what we believe the law
19 requires, so yes.

20 And in court it was a rather awkward moment when
21 their attorneys were asked to point out the requirement in
22 federal law and came up dry.

23 SENATOR CEDILLO: So, we have noncompliance.

24 And the effect of that is what? The funds were
25 not directed that would have been, or should have been, or could
26 have been appropriated for those students?

27 MR. ZAHRADKA: Yes, for the classrooms.

28 SENATOR CEDILLO: And the effect of that is on

1 the educational experience of those children?

2 MR. ZAHRADKA: Well, I know of at least one
3 school district that decided to abandon its bilingual classrooms
4 altogether, so that thwarted the parents' choice.

5 In other places, they simply got fewer resources.
6 And mostly -- my understanding is mostly the funds are for
7 teacher training and that sort of thing.

8 SENATOR CEDILLO: To enhance the quality of
9 education for the students.

10 MR. ZAHRADKA: Yes.

11 SENATOR CEDILLO: With respect to the question of
12 emergency regs, was notice provided to the Board that this was
13 not the procedure designed for that response, or not the
14 response for them to implement these regs?

15 MR. ZAHRADKA: Yes. We put extensive comments
16 into the Office of Administrative Law when they first proposed
17 the emergency regs, and set forth our substantive and procedural
18 objections to them proceeding in that fashion.

19 SENATOR CEDILLO: And the response of the Board
20 was?

21 MR. ZAHRADKA: OAL never got back to us either.
22 They approved it.

23 SENATOR CEDILLO: Ultimately this was all
24 resolved with AB 1481, or something of that nature?

25 MR. ZAHRADKA: AB 1485? I don't know the number
26 right at the top. But yes, it was resolved by the Legislature
27 and the Governor -- 1485.

28 SENATOR CEDILLO: So, in essence, at the local

1 level it took an act of Congress for us to --

2 MR. ZAHRADKA: Exactly.

3 SENATOR CEDILLO: Okay, thank you.

4 CHAIRMAN PERATA: Senator Battin.

5 SENATOR BATTIN: The Board not responding to your
6 demand letter, and therefore the suit, is your main reason for
7 the opposition to Mr. Hastings?

8 MR. ZAHRADKA: My main objection is that they
9 decided to go forward with this policy without getting the
10 appropriate public scrutiny, without going through very clear
11 mandates of the Administrative Procedure Act.

12 SENATOR BATTIN: So we'll expect to see you at
13 every hearing for confirmation of every member that voted for
14 that on the State Board? Because he didn't do it by himself,
15 if he voted for it. So you should be here in opposition to
16 every member of the Board? Should I expect to see you for
17 that?

18 MR. ZAHRADKA: I don't know who's left on the
19 Board that voted for it. Is there anyone left?

20 CHAIRMAN PERATA: I'll tell you if there are.

21 SENATOR CEDILLO: Would it be inappropriate then
22 for you to be at other hearings with other members who voted on
23 this?

24 MR. ZAHRADKA: It wouldn't be inappropriate for
25 me to be here, no.

26 CHAIRMAN PERATA: Thank you.

27 Next speaker, please.

28 Oh, I'm sorry, Senator Bowen.

1 SENATOR BOWEN: I just would like to better
2 understand the requirements of the federal law with regard to
3 the Reading First program. I did read your letter.

4 Your argument is first, and I think this is what
5 the judge found, there is no requirement that the federal
6 Reading First legislation, in the legislation that bilingual
7 classrooms be excluded.

8 But is there a requirement that bilingual
9 classrooms be included, or is the question left up to states to
10 decide?

11 MR. ZAHRADKA: Well --

12 SENATOR BOWEN: Is it a policy question, or is it
13 a requirement of the law?

14 MR. ZAHRADKA: There's nothing in No Child Left
15 Behind that says thou shalt include bilingual classrooms in so
16 many words. But one of the primary sub groups that are supposed
17 to be helped are limited English proficient children, all of
18 whom -- I mean, the class of people in bilingual education
19 classes is entirely composed of limited English proficient
20 students.

21 SENATOR BOWEN: So, your view is that while
22 there's no specific requirement that students in bilingual
23 classes be included, that the purpose of the law to improve
24 reading among limited English proficiency students makes it an
25 appropriate policy, that that would be the right choice?

26 MR. ZAHRADKA: Right. I believe that's
27 definitely the underlying intent. And I'll note that several
28 states, while this litigation was going on, there were several

1 states that did include bilingual classes in their Reading First
2 funds, including President Bush's home state of Texas.

3 SENATOR BOWEN: I was going to ask you about
4 that. Texas, Illinois, and Florida?

5 MR. ZAHRADKA: New Mexico as well, I believe.

6 CHAIRMAN PERATA: Mr. Hastings, did you want to
7 speak?

8 MR. HASTINGS: Yes, I want to clarify that the
9 bilingual classrooms that do two-and-a-half hours of English do
10 get the funds under our original rules. So, this was not an
11 anti-bilingual.

12 It would force changes in some bilingual programs.
13 Some bilingual programs were doing two-and-a-half hours of
14 English, some were not. This was a requirement on the program.

15 So, it's optional. To get the money, you had to
16 do the extra work in English.

17 CHAIRMAN PERATA: Next speaker, please.

18 MR. ZAHRADKA: Thank you very much.

19 CHAIRMAN PERATA: Thank you.

20 DR. QUEZADA: Good afternoon, Chairman Perata
21 and Members of the Senate Rules Committee. I am Dr. Maria
22 Quezada, and I'm the Executive Director of the California
23 Association for Bilingual Education, also known as CABE.

24 I am here to oppose the reappointment of Reed
25 Hastings as a member of the State Board of Education for three
26 main reasons.

27 First of all, his refusal to approve English
28 language development materials for classrooms where all of our

1 English language learners are, not just bilingual classrooms.
2 They have to be standard aligned, and he has refused to approve
3 those, allow districts to use their state textbook monies to
4 approve those materials. So, in a place where he stresses that
5 we need to teach children English, we are not giving teachers
6 the tools to do so.

7 I also oppose him on the fact that he has a lack
8 of understanding about English language arts and English
9 language development, which is very fundamental for English
10 language learners. You cannot take children and put them into
11 an English reading program that is developed for English-only
12 speakers and expect them to learn the level of English that they
13 need to succeed in school.

14 Thirdly, it's again that misrepresentation. He
15 just finished saying, you know, it's the two-and-a-half hours of
16 English.

17 Well, you have English going on in bilingual
18 classrooms. It's just the type of English that is given. You
19 can't put them, again, in an English reading program.

20 So that's going to be the gist of my testimony.

21 CHAIRMAN PERATA: That was fine. The rest is in
22 writing. You can just give it and we'll have it for the record.
23 We have a lot of speakers.

24 DR. QUEZADA: I would like to say a couple of
25 things, because I think that issue -- that issue needs to be
26 fully understood, that two-and-a-half hours of English, and the
27 need for English language development materials, needs to be
28 really fully understood.

1 CHAIRMAN PERATA: That hasn't been discussed; go
2 ahead.

3 DR. QUEZADA: It has not been discussed, and it
4 needs to be understood by all of you because that is the crux of
5 the matter.

6 SENATOR CEDILLO: Would you weave in your earlier
7 statement that learning in English is not the same as learning
8 English?

9 DR. QUEZADA: Absolutely.

10 SENATOR CEDILLO: Weave that into it so we can
11 get an understanding.

12 DR. QUEZADA: That's what I intend to do.

13 We oppose this confirmation because of that lack
14 of knowledge, and the pushing for not having appropriate
15 materials, and recognizing that there is a difference between
16 learning English and being put in an English classroom.

17 So, you know, and that has been shown in several
18 newspaper articles, you know, which again calls it into question
19 as to, you know, are we defending bilingual education, or what
20 are we defending?

21 We are defending the right of students to learn
22 English in a manner that's appropriate, with the textbooks and
23 the materials that are necessary for them to learn English in
24 the manner that has been researched, pedagogically sound, and
25 everything else.

26 His belief that mainstream textbooks, the
27 inclusion of specialized instruction for English students is
28 sufficient to be a full English language development program, or

1 to be a historical feat, as he is prone to saying. These
2 materials according to teachers are useless and they are forced
3 to supplement with other ELD materials that they have to
4 purchase on their own.

5 Mr. Hastings, in garnering support for his
6 nomination in the media, has put a distinct spin on the topic
7 and is trying to make it a bilingual issue, as opposed to an
8 equity issue. It really is. He knows, you know, by using that
9 "b" word that he's going to get some reaction from people.

10 But the real issue is learning English. We want
11 our children to learn English, and yet, we can't have it
12 because, first of all, in the development of that mainstream
13 program he did not give the publishers the English language
14 development standards that were passed and approved by that
15 State Board. They didn't have those to work from, and so
16 therefore the type of instruction that's in that mainstream
17 program is not aligned to standards as all other subjects are.
18 So, if he believes in accountability, in high standards, then
19 that needs to apply also for English language learners.

20 Mr. Hastings clearly doesn't understand the
21 nature of bilingualism, its development, and its implication for
22 teaching and learning and assessment, and the challenges that
23 are faced by teachers, and that are faced by students in
24 classrooms. Teachers are finding that they just slow the pace
25 of instruction, minimize the depth of the content, and to
26 accommodate the English language development levels of all
27 English learners. Many school districts are lowering their
28 requirements or their performance standards because they know

1 that they can't work with their students without the appropriate
2 materials.

3 The No Child Left Behind Act requires states to
4 establish English language development content standards.
5 California has done that. Yet, throughout the years, for the
6 past two years we have argued with Mr. Hastings and the State
7 Board to have monies be used, state textbook monies be used for
8 the purchase of materials of other companies that have already
9 aligned their materials to the state English language
10 development standard, and he has consistently refused to do so,
11 even after they have requested all of these materials in
12 writing.

13 Furthermore, for the past two years he's also
14 adamantly refused to understand that concept of the
15 two-and-a-half hours. Two-and-a-half hours of another English
16 reading program is not the same as getting English language
17 development in that classroom. It is distinctly different, and
18 what happens -- you know, if they're going to have -- children
19 are already receiving reading instruction in those classrooms.
20 If you give them another two-and-a-half hours of reading English
21 language arts, that does not leave time in the school day for
22 them to learn math, for them to learn science, for them to learn
23 social studies. They are getting English language development
24 in those programs.

25 CHAIRMAN PERATA: I'm going to cut you off now.
26 Thank you very much.

27 Next speaker, please.

28 MS. GUZMAN: Good afternoon. My name is Martha

1 Guzman. I work with the California Rural Legal Assistance
2 Foundation.

3 We represent mostly rural communities, and our
4 clients, particularly south of Northern California, our clients
5 that are either students that are English learners or parents of
6 students that are English learners.

7 We think here that the fundamental difference is
8 that Mr. Hastings lacks the understanding of the difference
9 between teaching in English and teaching English. This is best
10 exemplified in the ELD materials which was just discussed.

11 But perhaps more urgently to our clients is that
12 Mr. Hastings lacks the understanding of the process of learning
13 English, particularly pertaining to the area of assessments.
14 Research has shown that it currently takes anywhere from four to
15 seven years for our kids to learn English, yet Mr. Hastings has
16 continued to lead the misdirected battle of refusing to assess
17 our children fairly while they were in the process of learning
18 English.

19 This morning I just returned from Coachella in
20 Riverside County. The Coachella School District has -- 70
21 percent of their school population are English learners. Yet
22 all of these children are forced to take a test that they do not
23 comprehend. One of the teachers was describing to us that one
24 of her brightest students began to cry after 15 minutes of
25 beginning the test, and she began to cry as well.

26 This is a form of state-condoned child abuse. It
27 is not something that we should be directing our resources to,
28 and we should be finding solutions, solutions as were mentioned

1 that other states carry, Republican states. We have to meet No
2 Child Left Behind, and we can't say that the merit of No Child
3 Left Behind didn't come from Texas; it did.

4 So, this is the most important issue to our
5 clients. Currently Coachella, for instance, the school district
6 is threatening at a point to lose up to 10 percent of their
7 budget. They are not like most English learner heavily
8 populated districts. They do not have the benefit of high
9 property taxes as some of their neighbors in Palm Springs, nor
10 do they have other forms of income. They are dependent on our
11 federal and our state dollars. And when these kids not able to
12 meet the assessment, it is very burdensome.

13 There are solutions for this, as I mentioned, in
14 other states like Texas. And I'm not talking about, as was
15 mentioned earlier, of setting lower standards for our children.
16 We're talking about fair, making them -- giving them the
17 appropriate amount of time to reach the level of standard that
18 we want them to reach.

19 So there are solutions. There are options that
20 have been pointed out there, weighing the scores. And one of
21 the solutions that we've been promoting is primary language
22 assessment.

23 Just last September, Mr. Hastings sat at a
24 meeting at the CDE of an English language study session where he
25 stated that even if the Legislature were to pass a bill on
26 primary language assessment, he would make sure to draw the line
27 that it would not be included in the API, the basic purpose of
28 have gone primary language assessment.

1 So, there's no doubt in our mind that
2 Mr. Hastings does not intend to meet our clienteles' needs. And
3 in districts like Coachella, that is 74 percent of our kids.

4 I can spend much more time on the litigation that
5 was described a little bit ago, but just to give an example of
6 Coachella, Coachella would have been -- some of their schools
7 would have been part of those districts or schools that were not
8 allowed to receive Reading First funding before the lawsuit.

9 Now Coachella is a model district by the CDE.
10 They view Coachella and the implementation of the Reading First
11 Program as a model district. What does that tell you?

12 So, California Rural Legal Assistance Foundation
13 would ask for you not to reappoint Mr. Hastings. We feel that
14 we need members on the State Board that know the difference
15 between teaching in English and teaching English, and members
16 that understand how long it is and how important it is to have
17 these English language development materials because our
18 children need to learn English.

19 Thank you.

20 SENATOR ASHBURN: Question. This is only for
21 factual clarification.

22 You made reference to inequities in dollars
23 between districts based on property tax.

24 Do you believe that property tax is the basis for
25 the distribution or the availability of funding for schools?

26 MS. GUZMAN: No. I was giving it as an example
27 in terms of rich districts just given by the basis of their
28 population.

1 SENATOR ASHBURN: What was your reference to
2 property tax? You were explicit about that.

3 MS. GUZMAN: Yes, I was explicit about that.

4 SENATOR ASHBURN: Just for your information, the
5 State Supreme Court in 1972, in the Sorrano-Priest decision,
6 ruled that property tax was illegal, unconstitutional, as the
7 basis for funding education in California.

8 So, property tax is not a factor in the funding
9 of schools for the very reason thank you cited, but we would
10 have to go back to the 1960s in order to find the circumstance
11 that you're describing.

12 MS. GUZMAN: Okay. Senator, in that case I would
13 redirect my statement as the correlation between property taxes
14 and --

15 SENATOR ASHBURN: I don't understand it, and
16 that's why I asked.

17 SENATOR CEDILLO: I want to ask you just as a
18 kind of superficial, anecdotal though, why does it appear in
19 this state that there's always nicer schools in nicer
20 neighborhoods?

21 SENATOR BATTIN: Mr. Cedillo, having visited the
22 really beautiful school in the Coachella Valley Unified School
23 District that they just built, Desert Academy, which is a very
24 high performing school --

25 CHAIRMAN PERATA: We're getting to know one
26 another here.

27 SENATOR BATTIN: It's a wonderful school.

28 SENATOR CEDILLO: I do notice that school in

1 Delano, though.

2 I do actually recognize that you guys in the
3 rural areas have a lot of property.

4 CHAIRMAN PERATA: Not on my watch.

5 For the remaining speakers, I'm going to limit
6 you to two minutes because there's a lot of questions here that
7 have been raised and need to be answered, or at least the
8 opportunity to.

9 MS. ALVILLAR: Thank you. My name is Cynthia
10 Alvillar. I represent the Mexican American Legal Defense and
11 Educational Fund.

12 Our organization feels very strongly on this
13 position and led our President and General Counsel to pen a
14 letter, which she would like me to read into the record. I hope
15 to do that in less than two minutes.

16 "The Mexican American Legal
17 Defense and Educational Fund (MALDEF)
18 regrets to inform you of our
19 opposition to the confirmation of
20 Reed Hastings to the State Board of
21 Education. During his tenure as a
22 member and President of the State
23 Board, Mr. Hastings has consistently
24 taken and supported actions that
25 discriminate against and deny
26 educational opportunities for English
27 learner students and that violate the
28 rights of their parents.

1 "The Federal 'No Child Left
2 Behind Act' requires states to provide
3 standards-aligned, research-based
4 instruction for English learners to
5 teach them academic English. Mr. Hastings
6 has refused to support adoption of
7 instructional materials for English
8 learners that are aligned to the
9 state's English Language Development
10 Standards. In another violation of the
11 "No Child Left Behind Act," Mr. Hastings
12 supported discriminatory and illegal
13 policies to exclude certain English
14 learner classrooms from eligibility
15 for Reading First funding. It took a
16 lawsuit against the State Department
17 Education and action by the State
18 Legislature (AB 1485) to correct this
19 injustice.

20 "Unfortunately, Mr. Hastings has
21 demonstrated a bias against bilingual
22 education which prevents him from
23 fully understanding the needs of
24 English learner students. It is
25 absolutely critical that the State
26 Board of Education members fully
27 understand the needs of these students,
28 which represent approximately 25

1 percent of California's school children.
2 Some of these children participate in
3 legal alternative education programs
4 under Proposition 227 waivers. Rather
5 than demonstrate an understanding of
6 the needs of English learners, Mr. Hastings
7 has demonstrated a bias: He contributed
8 \$25,000 to Massachusetts' English-only
9 campaign, a campaign that aims to end
10 bilingual education in that state."

11 "California needs a board --

12 CHAIRMAN PERATA: Excuse me --

13 MS. ALVILLAR: -- that fully understands --

14 CHAIRMAN PERATA: Excuse me. We are being very
15 repetitive of previous things, so we'll just stipulate that you
16 have, and we'll submit for the record the balance of your
17 statement, and that MALDEF is in opposition to Mr. Hastings.

18 MS. ALVILLAR: Signed, Ann Marie Tallman.

19 Thank you.

20 CHAIRMAN PERATA: Once again, just the admonition
21 that a lot of this is being repetitive, and if you just make a
22 statement why you're opposed, and if it's previous things that
23 have already been said, just please cop to that.

24 Thank you.

25 MS. GAMIZ: Good afternoon. My name is Ana
26 Gamiz. I'm here on behalf of the National Council of La Raza in
27 opposition to the confirmation of Reed Hastings' reappointment.

28 As a governing and policy making body of the

1 California Department of Education, the State Board of Education
2 sets K through 12 education policy standards in the areas of
3 instructional material, assessment, accountability, and granting
4 charters.

5 Unfortunately, President Hastings has
6 continuously led the Board in the direction that has
7 marginalized the 1.6 million English learner students attending
8 California's K through 12 schools. His English-only philosophy
9 has permeated decisions that have hindered parents from making
10 choices regarding the education of their own children.

11 President Hastings has fostered misinformation
12 and bias in the schools by praising the introduction of a
13 teacher handbook later recalled due to the pressures of the
14 State Legislature. This contains such instructions as, for
15 example, the difficulty that immigrant children may have
16 understanding the word "bull." According to this inaccurate,
17 biased, and insulting book, bulls are not often used on the
18 table of Latin American cultures.

19 How can someone who oversees a public school
20 system that educates more than 2 million Latino children
21 annually suffer from such enormous lack of understanding
22 himself?

23 This poor leadership and disregard for parents,
24 particularly those who have not yet mastered English, has been
25 pervasive through Reed Hastings' tenure as Board President. We
26 have been appalled to see that when parents have voiced their
27 concerns at Board meetings, their comments in Spanish were
28 translated into English for Board members, yet the responses of

1 Board members in English were not translated back for the
2 parents to understand what was said.

3 Although studies show that students thrive when
4 parents are actively involved in their education, President
5 Hastings has excluded these parents and hindered them from
6 making choices regarding the education of their own children,
7 contrary to what is encouraged under both state and federal
8 law. These parents have been left in the dark with the lack of
9 misinformation [sic] and the lack of support from our state's
10 chief educator.

11 Our children and our parents deserve better, and
12 the role of the State Board of Education is to ensure that all
13 children are provided with a quality educational experience and
14 to encourage meaningful parental involvement in the schools.
15 We need a State Board of Education president who will listen to
16 the community, welcome family involvement in the schools, and
17 will not tolerate racial or ethnic bias in the school's policies
18 or in the classroom.

19 Since Reed Hastings is not this candidate, we
20 urge you and the Governor to seek someone who is more qualified
21 and will be sensitive to the needs and the challenges of
22 California's diverse communities.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 MR. O'LEARY: Good afternoon. My name is Denis
26 O'Leary. I'm here representing the League of United Latin
27 American Citizens, LULAC on the national level. LULAC is the
28 largest and oldest civil rights organization for Latinos.

1 LULAC believes that academics are number one.
2 English is important. Unfortunately, without academics English
3 allows a person to ask how tall the grass should be when they
4 cut it for the owner of the house.

5 Unfortunately, Mr. Hastings' policies have
6 widened the gap with students, and you've heard about that.
7 Also unfortunately in 1998, when Prop. 227 came about, there
8 were 800,000 English language learners in this state. We were
9 promised that in one year they would be fluent in English.

10 Today, there are just under 1,200,000. The
11 number has increased. And I've given you a paper of this with
12 the long discourse so you can feel free to take your time.

13 English is important. Academics are more
14 important. The Legislative Analyst's Office, nonpartisan fiscal
15 policy advisor to yourselves, came out at the beginning of 2004
16 with a study on how long does it take to become English
17 proficient. They divided it up into languages, and personally,
18 I don't know if I would have done that myself. But it takes
19 6.7 years on an average for half of the English language
20 population to become fluent in English. That's half of the
21 population, 6.7 years.

22 Now, 90 percent of the English language learners
23 are in English immersion. We could blame this 6.7 years on that
24 10 percent of the students that are in bilingual instruction,
25 except if we tried those type of numbers on the budget, it would
26 not go very far, would it?

27 Mr. Hastings has continuously gone against
28 parents' rights and local control. LULAC is concerned that he

1 has financed his way to public policy on charter schools and to
2 the State Board of Education. Without his finances and generous
3 donations to many people, and many who are well deserved and
4 good people, we don't believe that he would have stood out in
5 any of these educational subjects. His money talked for him.

6 The Rand Corporation came out recently with a
7 study which I'm sure you have read about, and I'd like to quote
8 one line from the senior economist from the study that said,

9 "California schools are lagging
10 behind most other states, and these
11 findings suggest policy makers need to
12 make the major changes in order to
13 repair the problems."

14 California is not number one in the country in
15 student education for English fluent students, nor are they
16 number one for English learners. We need to start looking
17 around, seeing the numbers, and seeing if the State Board of
18 Education can actually take not the model student that they wish
19 to have, but the students we have.

20 CHAIRMAN PERATA: Thank you, sir.

21 MR. O'LEARY: Thank you.

22 CHAIRMAN PERATA: Yes, sir.

23 SENATOR BATTIN: Mr. Chairman, I have a question.

24 CHAIRMAN PERATA: Why don't we just get through
25 this, and then you can ask it.

26 MR. ROCHA: Good afternoon, Senator Perata,
27 Members. My name is Rafael Rocha Munoz.

28 I am a person who went through bilingual

1 education at Bates Elementary in Cortland in the '70s, and I am
2 a backer of bilingual education.

3 Basically, I'm also a member of Sacramento LULAC,
4 the League of United Latin American Citizens. I am here to
5 testify against Mr. Hastings on the ground that I'm very
6 disappointed as a taxpayer on his disappointing English learners
7 policy. You've heard a lot about it.

8 I very much agree with a lot of the previous
9 speakers, but I want to also emphasize another thing, and now I
10 want to separate myself from everybody else. This is me
11 speaking.

12 I am very disgusted and disappointed the way
13 California history is taught. In specific, I am very
14 disappointed the way for 125 years, Mexican Americans and also
15 Native Americans have been extremely discriminated in this
16 state. You could say it was a racist -- you know, things have
17 been changing now. But the way history has been written, I'm
18 very disappointed in, sir.

19 And the way -- I have a 16-year-old daughter that
20 goes to American River High School, and I was looking at the
21 history books. And it really does not fully acknowledge all the
22 racism that went on for many, many years.

23 And I do believe that when we talk about higher
24 standards, I do expect the State Board of Education to have an
25 accurate -- excuse me, let me just look here -- an accurate
26 accounting of the discriminations in this state. And we will
27 not tolerate second-class -- Latinos, Chicanos, and Mexican
28 Americans will not tolerate second-class status in our own land.

1 So, I'm here to say that he -- I have never heard
2 him say that the history books have -- need to be looked at.

3 And also the fact that Latino students in the tv
4 images, they are very rarely portrayed in a positive light.
5 Yes, I do believe that we want to talk about higher standards.
6 Where was Mr. Hastings? Yes, and if that means going to
7 Hollywood and telling them they need to think about having more
8 Latino positive students in their tv -- I'm talking broadcast,
9 ABC, NBC, CBS -- why is it that we have turned -- degenerated
10 into an ugly racial hostility? Is it because of Pete Wilson and
11 the Republicans -- and I'm going to stop there -- that have
12 not -- that have been very hostile towards non-Anglo whites.
13 This is just a reality.

14 And I do appreciate you, and that's why I ask
15 that you vote against him. I hear that he's a very swell
16 person, a swell man. I don't doubt that. I know that he is,
17 but I don't think he's qualified to be on this very important
18 board.

19 Thank you.

20 CHAIRMAN PERATA: Thank you, sir, for being here.

21 MR. MEDEL: Good afternoon, Mr. President,
22 Members of the Committee. My name Gabriel Medel. I'm not
23 representing an organization or coalition.

24 I'm a parent. I have been organizing parents
25 across California in a volunteer base. We have a group of
26 parents that have no money or the staff or a plan to operate,
27 but we worked around the state, looking into the instruction of
28 the English learner.

1 I've been at the Board in many instances. And
2 the Board members know me. I express my opinion.

3 I'm here today, unfortunately, to oppose the
4 nomination of Mr. Hastings to the Board because I'm seeing
5 action over the time that really attempt against the right of my
6 children.

7 Three things that he need to do in order for me
8 to change my mind and say, "Yes, please confirm him." First of
9 all, allow the state -- the state test a language standard that
10 have been approved by the Legislature and signed by the Governor
11 to be included in the API as an indicator that my child is
12 acquiring the academic standard they need to acquire in their
13 own language while they learn English. Could he do that? Why
14 can't we get him to do that? I can't understand as an immigrant
15 parent. That's the right thing to do.

16 It happened that I had opportunity to go in
17 December to Washington to a Title III Summit. I was shocked to
18 learn that every other state that had a big number of English
19 learner students has adopted an evaluation system that is
20 parallel to their standard for the English learners in the
21 primary language.

22 I learned also that the federal law doesn't
23 require my child to take a test in English before three years.
24 We here because the State Board, not these Legislators, choose
25 to regulate it that way under the leadership of Mr. Reed
26 Hastings.

27 I'm asking him, not you, what is wrong to give
28 our children the opportunity to show they've acquired the

1 academic standard that we want, because I want my child to learn
2 English. Yes, I do. But I want my child to learn academic, as
3 I do, too, in my own language. But today it's not happening.

4 For somebody who's asking for that data, what
5 that data means to every students over the time, the same
6 student, to really have a picture if that student is really
7 excelling, to have a picture in the time without identifying the
8 student, and compare with the past. We don't have the truth.
9 And that's what I've been telling to this body. Whatever the
10 study, a colony or any mathematical high level will understand
11 the difference in the test that is given and the data presented
12 like a picture in a given time, and the data following the same
13 player over the time. And that's the big difference the people
14 have been talking here.

15 It takes me, a parent, to explain that. I'm not
16 An educator. I'm just a parent, but I'm just a parent with a
17 strong academic skill.

18 So two things -- three things. My child needs to
19 learn English. And every parent that I meet want their child to
20 learn English. But the school, because of the leadership of
21 this gentleman and Board, and the State Department of Education,
22 every school district discouraged our parents to request a
23 waiver. They are telling our parents, there's no point to learn
24 English if you choose an alternative program.

25 And I say, wait a minute. I see somebody saying
26 yes. That is false. You are wrong. The Proposition 227 says
27 it doesn't care. It doesn't matter what environment the child
28 is, they need to be taught English language development. I

1 choose my child to be in English immersion. They have to have
2 ELD.

3 And that's the only problem I have with Mr. Reed
4 Hastings. Why he doesn't allow to have an ELD standard with
5 textbook aligned with the state standard?

6 If he just do those three things, our children
7 would have a chance to prove they are capable, they're
8 intelligent, they can learn academics, and they can learn
9 English, they can excel.

10 And the two-and-a-half hours he wants our
11 children to be submitted to English, again, with a program that
12 is not meant to teach English as a second language, you know
13 what he's doing? He is taking the access of my child to the
14 core curriculum because the day is gone. No math, no science,
15 no social study, nothing in the classroom. I've been talking
16 with teachers who say that's crazy, how we focus just on reading
17 in English.

18 See, please listen to me. Listen to us. Open
19 your hear and ask him this question, why he doesn't change his
20 mind. If he doesn't change his mind, he will continue hurting
21 our children, and you will see me here again, over and over, and
22 at the State Board again.

23 You know what? For me it's not easy to get here.

24 CHAIRMAN PERATA: Where are you from?

25 MR. MEDEL: I'm from Los Angeles.

26 CHAIRMAN PERATA: Thank you, sir.

27 MR. MEDEL: Thank you.

28 CHAIRMAN PERATA: Thank you for being here.

1 MR. MALHOTRA: Good afternoon, Mr. Chair and
2 Members. I'll be very brief. I know it's been a long
3 afternoon.

4 My name is Vic Malhotra. I'm the legislative
5 advocate for Asian Americans for Civil Rights and Equality, and
6 I'm speaking on behalf today of two of our partner
7 organizations, the Asian Pacific American Legal Center of
8 Southern California and Chinese for Affirmative Action in
9 opposition to Mr. Hastings' confirmation.

10 I'm not going to read my whole statement. We did
11 submit a letter so it's in the record.

12 But I just wanted to underscore the fact that
13 almost all or all of the representatives who've spoken today,
14 and we include ourselves, are certainly not opposed to ensuring
15 that our schools offer every opportunity for students to learn
16 English. That's what it's all about. There's just a different
17 philosophy on how you learn English.

18 Our objection really does center on the
19 opposition that Mr. Hastings led on the school board to --
20 including testing of students in languages other than English,
21 to determine -- to fulfill and reflect the accountability
22 measures. So with that, as a result students who are not
23 proficient in English, even if they enrolled in the school the
24 day before the English tests are given, are required to take
25 those tests in English. And the schools with large English
26 learner populations, their successes are not reflected by those
27 English tests, and they're labeled, unfairly, underperforming.

28 I'll just close by saying that the EL student

1 population continues to grow in California, and it's critical
2 that the State Board of Education have members and leadership
3 that possess the knowledge and abilities for the development of
4 policies that address all our students, including the
5 one-in-four students that is not an English -- one-in-four
6 student that is an English language learner.

7 With that, I'll close and urge your no vote.

8 CHAIRMAN PERATA: Thank you, sir.

9 MR. SCHILLA: Good afternoon, Mr. Chairman and
10 Members. I'm Peter Schilla with the California Association of
11 Asians for Bilingual Education.

12 And I've been working on this subject area since
13 1970, when, as an attorney, I was on the team that sued the
14 State of California because of its unfortunate policy of
15 including English learners in classes for the mentally retarded
16 simply because they did not speak English.

17 Since that time, we've had a very difficult
18 challenge. My first legislation was signed by Governor Reagan
19 in 1972, where we actually had the first assessment of how many
20 children there were in this group and what skills they had.

21 I personally like Reed Hastings. I think it is a
22 very difficult thing to oppose his confirmation, but the record
23 has been very, very long, and the damage that I believe he has
24 done has been very extensive and very troubling, and that's why
25 I'm here.

26 I would just ask that you not vote to confirm him
27 at this time.

28 CHAIRMAN PERATA: Thank you, sir.

1 Having exhausted the speakers, pleasure of the
2 Committee? Questions?

3 SENATOR BATTIN: I want to comment more
4 anything. Thank you for indulging me.

5 Mr. Chairman and Committee Members, I have sat
6 through this very interesting hearing. For the Chair to say
7 this should not be about bilingual education, that is exactly
8 what this hearing is about.

9 The people who came up in spoke in favor of
10 Mr. Hastings talked about many different things. They talked
11 about charter schools, talked about his leadership on the
12 Board.

13 Every single one without exception of the
14 opponents talked about bilingual education, and that they didn't
15 like him because of that. I mean, that is what the opposition
16 is about; that is what the votes are going to be based on, and
17 denying that just is not real.

18 What troubles me, and I sat through this, I think
19 the first speaker that came up or opponent that came up and
20 said, here, this analysis show that it's not working.

21 I couldn't understand it, because I had in front
22 of me the results that we have had since 227 passed. That's why
23 I challenged her and said, "Are you saying that what
24 Mr. Hastings said was wrong? The same with the Superintendent
25 of Public Instruction said is wrong by saying what these numbers
26 are?" She said, "Yes."

27 And I looked at what they're talking about, and
28 what she handed out to us basically is, the author of the study

1 basically -- follow this tortured chain here -- what he said Ron
2 Un said it would be, and then he based his results on the
3 comparison of that.

4 I would ask you to look at this, and read it, and
5 make your own judgments on it.

6 But that's got nothing to do with reality
7 whatsoever.

8 Then when the spokesperson for LULAC came up,
9 that's what I wanted to ask a question about, because again they
10 were saying we have not had results through these policies that
11 the Board has adopted. I can't accept that.

12 What I have to accept is what the State of
13 California has come out with in its own analysis. I'm going to
14 have to accept that Superintendent O'Connell is capable and
15 would certainly put out something that is fair and accurate.

16 And when I look at that, I see from 1998 to 2002,
17 in the SAT 9 results, what I see is in third grade, English
18 learners increasing in reading 109.74 percent. English learners
19 in math, 116.97 percent.

20 When you look at all grades, we saw improvement
21 across the board. All students increased 24.64 percent, all
22 students: white, brown, black, green, purple. English learners
23 increased 91.84 percent, that was in reading. In math all
24 students increased 38.72 percent; English learners through these
25 policies that have been in place because of Mr. Hastings'
26 leadership have increased 89.90 percent.

27 That's from the state. That's our numbers.

28 So, we heard a lot of very emotional people. A

1 lot of people come up and say, "Well, this is wrong, and that's
2 wrong, and he's certainly a nice guy but his policies are
3 destroying us."

4 I disagree with that. The fact of the matter is,
5 the voters, when they had a chance to talk about whether we were
6 going to make teaching English a priority in our schools
7 overwhelmingly said yes.

8 I spoke earlier today, and I said it was my
9 experience that parents view it as, speaking English equals
10 opportunity. Then when we look at the results that the state
11 has come out with on the SAT 9 test, they are unmistakeable.
12 They've increased over every single group, the English learners
13 have. And that tells me that these policies work.

14 We can't just, though, look at Mr. Hastings'
15 achievements just on that. We have to look at everything. We
16 have to look at how he's been overall on charter schools.

17 I remember back a few years, I actually never met
18 Mr. Hastings until today, but I certainly knew your name because
19 you were the Reed Hastings behind the Charter School
20 Initiative. And you moved the world, because people didn't want
21 it on the ballot.

22 So, we have to know he's been involved in charter
23 schools and the good that that has brought, and the leadership
24 on the Board.

25 Interesting first meeting. Nettie tells me every
26 one of them's going to be the same.

27 CHAIRMAN PERATA: Motion to resign.

28 [Laughter.]

1 SENATOR BATTIN: With that, thank you for
2 indulging me.

3 I will move the confirmation.

4 CHAIRMAN PERATA: Thank you.

5 Other questions or statements? Senator Bowen.

6 SENATOR BOWEN: Thank you.

7 The testimony did work as intended. I now have a
8 much more crystalized version of the questions.

9 I think a few themes have emerged, and they're
10 ones that I want to ask you about.

11 One of the things that I heard several times was
12 that the state is lacking in English language development
13 materials that are aligned to the curriculum and both approved
14 and available.

15 Can you respond to that concern?

16 MR. HASTINGS: Absolutely.

17 Historically English learners were treated as a
18 special class, not quite like Special Ed., but too close to be
19 comfortable. And there were special textbooks for English
20 learners. Sometimes they never really got distributed into the
21 right hands. And English learners are spread out. We have
22 English learners in every community in California.

23 And the Board before me -- I can't really take
24 credit for this -- had the key insight when you have 25 percent
25 of the students that are English learners, the key to success is
26 to integrate the English language material, English language
27 development material directly into the mainstream textbooks and
28 to provide various instructional strategies because that is the

1 only way you're going to get it into the hands of every teacher.

2 We forced the publishers to include this. So, in
3 respect, they did that. And we're very proud of our adopted
4 textbooks which integrate -- and it's the first time it's ever
5 been done anywhere in the country, and now other states are
6 following that -- to integrate the English language materials
7 directly in it.

8 Now, what it's in tension with, this idea of
9 mainstreaming English instruction, is the idea that if we don't
10 have a special textbook for what we're doing, we're somehow --
11 we're being short-shrifted, or we're being short-changed. And
12 that's what you feel. I mean, you feel -- genuine advocates for
13 children who are every bit as sincere as I am, and they look at
14 it sincerely and say, "Our kids are getting short-shrift because
15 there's not specialized material."

16 Our view is no, when you have the dedicated
17 material, it doesn't get distributed; it gets ghetto-ized. And
18 that mainstreaming is the key to giving those children
19 opportunity, which has been the philosophy, and that's what you
20 see coming to tension.

21 SENATOR BOWEN: So, let me try to boil that down.
22 The answer is, there aren't specific English language
23 development materials, but that's because the Board feels that a
24 better approach is to use the curriculum?

25 MR. HASTINGS: I would nuance that slightly,
26 which is there are specific materials and they're integrated,
27 you know, and here's a subset in the pages in the mainstream
28 textbooks.

1 But yes, there's not a separate book.

2 SENATOR BOWEN: Second question, second set of
3 issues, revolves around the accountability system. And as I
4 understand, the No Child Left Behind Act requires states to
5 assess the academic progress of EL students in the language and
6 format -- I'm quoting here from a letter from someone whom I
7 don't know, so if this is wrong, you'll set me straight, I'm
8 sure -- most likely to lead to valid and reliable results, and
9 it requires assessment in primary language to the extent
10 practical.

11 California's policy is to test in English from
12 the very beginning. My first question is, how does that comply
13 with the NCLB requirement as I understand it, or do I not
14 understand it correctly?

15 MR. HASTINGS: No, you understand it at a high
16 level right now, which is the key.

17 SENATOR BOWEN: Better than when I got here.

18 MR. HASTINGS: The key is validity. So,
19 California has English language standards. You cannot validly
20 assess someone's knowledge of English language standards in
21 another language.

22 So, that's the tension. It's not a valid
23 assessment of do they know English. We don't have reading and
24 writing, generic language independent standards. Our standards
25 are English language arts. So, that guides a lot of the
26 thinking.

27 So, NCLB says all students must be proficient in
28 state standards, which varies state by state, by the third

1 grade. And that is in fact -- you kind of referred to it
2 earlier with -- why did we do this two-and-a-half hour
3 requirement in English reading? Because we felt that's the only
4 chance a student has to be at the proficient level by third
5 grade, is if they get at least two-and-a-half hours of English
6 language instruction, and that is the requirement that then was
7 overturned. And since it's been overturned, we're complying
8 with the law and moving forward.

9 SENATOR BOWEN: I think the question arises not
10 in the context of English but in the context of other subject
11 matters like math and social studies. If you are testing a
12 child with story problems in math or in social studies who has
13 had six months of English, and you test them in English, I
14 suspect you're going to get a different result than if you test
15 them in their native language.

16 MR. HASTINGS: That's correct.

17 So, the vast majority of English learners, they
18 enroll in California schools in kindergarten. It's not that
19 there aren't some English learners who arrive in tenth grade;
20 there are some. But the vast majority arrive in kindergarten.

21 And our view on the State Board has been, let's
22 get the student proficient in English quickly so that they can
23 be in the mainstream curriculum, because the problem with the
24 other model, which is, okay, a student doesn't know English
25 well, so we're going to give him specialized instruction, you
26 know, finding biology instructors whose --

27 SENATOR BOWEN: I'm leaving aside the instruction
28 at this point and just asking about the assessment part of it,

1 just the testing part of it.

2 MR. HASTINGS: They're linked because what you
3 want to do with testing is guide instruction. So, our view on
4 it is, the API is a signal to schools. It's how the state wants
5 a school to operate. In other words, we want a school to teach
6 science, so we have a science assessment. They do well on the
7 API, they care about the API.

8 And by doing it as English language testing, what
9 we're doing is getting districts to get their students, both the
10 English learners who are in the kindergarten, which is most of
11 them, and the English learners who arrive later, fluent in
12 English as quickly as possible because there is no subject
13 matter instruction in non-English once you get into middle
14 school and high school.

15 So, is it tough on someone who arrives in tenth
16 grade from Asia, from Mexico, from anywhere? It is tough. I'm
17 not saying it's not tough.

18 I'm saying we don't cater to them in subject
19 matters because it's not realistic to do that. So the view is,
20 get them in English as quickly as possible.

21 And what we do is, in the first year their score
22 is exempted from the school's score. So, there's an exemption
23 on that in terms of protecting the school about that aspect.

24 We are trying -- you use testing to signal to
25 schools what you want done. And we are signaling the schools,
26 get the kids fluent in English as fast as possible, then the
27 test scores of the school will rise, because we believe that is
28 in the student's interest.

1 It is not in the interest to attempt to teach
2 them in their original language. A, there's too many, and B,
3 it's not good enough subject matter instruction because we can't
4 staff it.

5 SENATOR BOWEN: It wasn't intended to be a
6 suggestion that you teach the subject matters. In Venice High,
7 for example there are between 75 and 77 native languages spoken,
8 or at least the last time I talked to the principal of Venice
9 High, and there is just no conceivable way that you can, even if
10 they were one to third grade students.

11 MR. HASTINGS: Similarly, it'd be hard to test
12 those in 75 languages.

13 SENATOR BOWEN: But isn't that what NCLB requires
14 as I read it, to test in the primary language to the extent
15 practical? Clearly, if you have one student who's speaking a
16 language that no one else speaks, you're not going to recreate
17 the entire testing mechanism.

18 MR. HASTINGS: Everything we've done has been
19 approved by NCLB and has not been challenged in court. So,
20 everything we're doing is compliant with NCLB.

21 We'd have to step back, and I'd have to sit down
22 with our State Board attorneys and go through, how does that
23 conflict with this other passage in NCLB?

24 SENATOR BOWEN: But as I'm understanding it, the
25 criticism is that in other states, they do have another
26 mechanism for dealing --

27 MR. HASTINGS: No, as an example like Florida
28 what they'll do for testing math is, they give you a dictionary,

1 English-Spanish dictionary.

2 So, it's not that you're getting a translated
3 test. But you can't do that -- they don't do that in their
4 English testing.

5 SENATOR BOWEN: Again, I distinguish between
6 testing, and my math is probably the easiest example to deal
7 with, because you can do a math problem and come out with the
8 right --

9 MR. HASTINGS: Correct. And as an example, we
10 call it -- the technical jargon for that is an accommodation.
11 And we provide that accommodation of a dictionary to look up
12 words when we do testing now.

13 So, typical, another accommodation for English
14 learners is untimed tests so that they can have longer. We've
15 converted entirely to untimed tests, so that's another example.

16 So, everything we've done has passed all the
17 legal musters. Of course, there's a lot of court cases around
18 this. It's been a question of fundamental fairness. And
19 roughly speaking, the courts have held if the state has a valid
20 interest in driving positive instruction, then the things that
21 we're doing are legal.

22 SENATOR BOWEN: I think we're beyond talking here
23 just about what's legal. I think we're also talking about
24 what's wise.

25 MR. HASTINGS: Fair enough. You were quoting
26 NCLB, were we compliant or not, so I was trying to answer that
27 question.

28 If we want to switch to what's wise, then we go

1 to instruction, and why it is wise to get students, for their
2 benefit, fluent in English as quickly as possible, because the
3 alternative approaches, the more soft-love approaches, where we
4 say, okay, we're going to teach science at least in Spanish. I
5 mean, that's the majority of English learners.

6 The problem is, it ends up the quality of the
7 instruction is not as good. It becomes somewhat ghetto-ized
8 instruction. They don't have the political base often locally,
9 and our view has been -- and it's the same with Special Ed -- is
10 that everywhere we can, we mainstream.

11 SENATOR BOWEN: A related question that I would
12 like to explore with you has to do -- and I think the gentleman
13 who came from Los Angeles did a pretty good job of laying out
14 the issue -- it has to do with the adequate yearly progress and
15 API Programs, and whether or not you would include the results
16 of English language development tests in your determination of
17 how schools are doing in what is essentially a growth measure?

18 One of the things we heard again from several
19 people is that the assessments of schools ought to include how
20 schools are doing at teaching English, or at least of having
21 their students learn English.

22 I apologize if I'm not getting exactly the
23 terminology right. I hope I've gotten at least the concept.

24 MR. HASTINGS: We signal to schools. So, the
25 test you're referring to is the CELD test, is the California
26 Test of English Language Development. It's scored on a one
27 through five basis. It has an oral component because it also is
28 oral fluency.

1 You want to be careful about adding things to the
2 API that are -- you know, the API is relatively high stakes --
3 that have a difficult time being objectively marked. It's still
4 useful, but it's not that it's only a paper and pencil test. And
5 so, getting it to the standards of validity and reliability that
6 are required to include in the API at tremendous cost, and since
7 they eliminate the oral component, which is essential in oral
8 fluency.

9 And we look at the CELD test as a guide, and the
10 schools use it, and they are already incented to get the
11 students fluent in English because the tests are in English,
12 and the students do much better when they know the language.

13 So, we look at it and say that we provide the
14 incentive to get students fluent in English, and we provide the
15 resources, which is this diagnostic tool.

16 And the main thing the CELD test is for is
17 reclassification. Does a student get the additional services
18 and additional money for being an English learner? And without
19 the CELD test, we were having some districts say, "Oh, you know,
20 you can say a few sentences in English? You're fluent." That
21 means their numbers look good. And with the CELD test, there's
22 an objective criteria. So, it's used for redesignation, and
23 it's not designed to be used as part of the API.

24 SENATOR BOWEN: So is there a mechanism for
25 assessing how schools are doing at moving students to English
26 proficiency? Because for the most part, 99 percent of what I
27 heard, or 95 percent, was not a dispute over bilingual
28 education. It was a dispute about how English language learners

1 best acquire English language skills, and how that's measured.

2 MR. HASTINGS: Yeah, but that is the debate about
3 bilingual education. In other words, this thing of teaching
4 English versus teaching in English. That is the heart of the
5 debate.

6 And again, it's a right of Californians for
7 parents who choose to have bilingual education. We just want to
8 make sure that in bilingual education, there's at least the
9 two-and-a-half hours of English.

10 SENATOR BOWEN: I guess I understand that
11 discussion a little differently, as somebody who learned
12 Spanish, French, German, and Japanese over the time that I've
13 learned various languages. And certainly when I was learning
14 Japanese, having some instruction in learning Japanese in
15 addition to instruction in Japanese was critical. It wouldn't
16 have been enough.

17 And I actually attended classes in Japanese at
18 one point, and that was stressful. So, I did get that part.

19 But having some time period, I'm looking at this,
20 I think, through the opposite end of the spectrum. You're
21 looking at it as, are we teaching other subjects in the native
22 language. I'm looking at it as, are we spending sometime
23 specifically teaching English language development skills, where
24 you're basically looking at how students acquire --

25 MR. HASTINGS: For a kindergartner, can you
26 explain to me the difference between English language
27 development and English language learning? Because that's the
28 heart of the debate.

1 SENATOR BOWEN: I'm not sure I can explain for a
2 kindergartner. I probably could do a better job with a ninth
3 grader.

4 MR. HASTINGS: I'm sorry to interrupt you.

5 My point of that --

6 SENATOR BOWEN: I don't understand much about how
7 kindergartners learn anything.

8 MR. HASTINGS: The point is, the approach that
9 we're suggesting, or that we attempted -- remember, it's not
10 even in force now. We're just talking about something that
11 happened for a period of a year -- was only in grades K through
12 three. So, now when an adult learns a language, it is different
13 than in K-3.

14 And, you know, you kindly, Senator, didn't force
15 me or ask where I was on 227, but I voted against it like a lot
16 of liberal elite types.

17 SENATOR BATTIN: I withdraw my motion.

18 [Laughter.]

19 MR. HASTINGS: I've become convinced it's really
20 incredibly effective, because I've gone around all through the
21 Central Valley to principals and teachers who say the same
22 thing, "I voted against it, and I can't believe how well the
23 kids are learning." It's phenomenal all the way through; in
24 Coachella, all the way through the Central Valley, through Los
25 Angeles.

26 So, you know, as a Democrat, you're not supposed
27 to say, "I'm a Democrat, and I support 227." It's become a
28 litmus test item. And when you talk to people --

1 SENATOR BOWEN: It's the law. And I think we all
2 try, to the best of our extent, whether we agreed or disagreed
3 with something, once it's the law, it's the law. Only the
4 courts or the voters, if it was an initiative, have the right to
5 change it.

6 So, I don't think anybody's up here trying to
7 change the law. At least, I'm not. I'll only speak for myself;
8 it's safer.

9 One other issue, and it's not one that was raised
10 in any of the things, but it's sort of rumors that have gone
11 around. I figure it's always better to get them out on the
12 table and responded to rather than having all this whispering
13 going on.

14 It has to do with charter schools, and
15 allegations that there are a set of double standards, depending
16 on who the charter school is, and that somehow there are Reed
17 Hastings-favored charter schools, and then the rest of the
18 charter schools.

19 Since I've never been able to get any more
20 explicit detail than that, I thought I would just ask you
21 directly about where that might have come from? What charter
22 school enforcement actions you might have taken that have led
23 people --

24 MR. HASTINGS: Like any public official, the
25 motives are impugned. I absolutely call things as I see them,
26 and I'm very focused on academic results. And I've been a
27 strong critic of low performing one-one charter Schools.

28 And I don't look at charter schools as an end in

1 itself. I look at it as a means to high academic performance.

2 And my favorites are the ones that have great
3 academic results.

4 But as much as any human can do, I try never to
5 let, you know, the personal relations, any other aspect,
6 interfere with my judgment or color that. And furthermore, I
7 strive for the appearance of impartiality.

8 So, I don't think that's fair charge. I have
9 been criticized in the charter community because I care about
10 high academic standards. That's not -- in many parts of the
11 charter community, you'll find that's not universally accepted.

12 SENATOR BOWEN: I did notice in your Statement of
13 Economic Interest that you have an investment in a private
14 school --

15 MR. HASTINGS: Correct.

16 SENATOR BOWEN: -- entity. Does that ever create
17 a conflict? And if so, do you recuse yourself?

18 MR. HASTINGS: It has not. It's a friend of mine
19 who started a private school before I got on the State Board,
20 and so I made an investment in it. It's four or five schools
21 now.

22 And we don't have any practical regulatory
23 authority over private schools.

24 SENATOR BOWEN: It's not a charter school?

25 MR. HASTINGS: No, it's a private.

26 I have no investments in charter schools. I've
27 donated money to them.

28 SENATOR BOWEN: I would hope that that's seen as

1 an investment in charter schools; although not one that's
2 reportable on your Statement of Economic Interest.

3 MR. HASTINGS: That's right.

4 SENATOR BOWEN: Thank you, Mr. Chairman.

5 CHAIRMAN PERATA: You're quite welcome.

6 Senator Cedilla.

7 SENATOR CEDILLA: I'll introduce myself. My name
8 is Gil Cedillo. Mr. Hastings and I met for first time this
9 morning in the hallway, and I am disappointed that we did not
10 meet sooner.

11 The first thing I want to say to you is that I am
12 not well positioned to debate with you pedological strategies.
13 I am not a product of bilingual education, nor was I an English
14 language learner. So, I don't know those experiences. It's not
15 my area of work.

16 I do know that you and I share many, many
17 friends. I've heard from many of them this week. But I'm
18 disappointed that I have not heard from you.

19 I'm glad to hear from Eli Broad any day of the
20 week, and David Tokofsky, and always happy to see Caprice Young
21 here today, a very dear friend, and we have worked very hard
22 collaboratively together in Los Angeles. For me, therefore, it
23 is not about those strategies.

24 This is a question of leadership. It's a
25 question of ethics. And it's a question of representative
26 democracy and our obligations to that.

27 This young man, Ricky Gill, is very impressive.
28 Let's say I'm inclined. I will not reveal how I'm going to vote

1 when he appears before us, but I have a strong inclination.
2 I'll say that.

3 But we really do have duties to parents, to
4 students, to taxpayers. We should be fair and just, and the
5 results should reflect that.

6 So, on the question of your work product, let me
7 say to you very honestly and candidly, I'm very disappointed
8 that with all your attributes, with all your friends and fans
9 and support, your skill set, your impressive resume, that we
10 haven't spoken sooner. We failed to meet sooner. The Pro Tem
11 and I hadn't the pleasure of engaging this with you sooner, nor
12 did Ms. Bowen.

13 And so, the fact of the matter is, and I think
14 you'll agree, and there's little in terms of disputed facts
15 here. We have one law. The law applies to everyone. No one is
16 above it; 227 is the law.

17 As I told Jim, it didn't mean as much to me
18 because, like I said, I'm not a product of bilingual ed or an
19 English language learner. It was the only language that I spoke
20 until my most recent efforts to grow.

21 And so for me, and I don't think there is a
22 dispute, it's question of leadership, and what are the
23 attributes, what the responsibilities are.

24 And one of them that I have that is very
25 important to me, and very key, and I'm very up front about, is
26 the question of trust. The public trust, our trust, the
27 communication that emerges from that, and the acts which
28 demonstrate a desire to be inclusive in our democracy, in our

1 role as leaders.

2 Like I said, I cannot argue with any of my
3 friends who have spoken about all the tremendous good deeds that
4 you've done, and you have done many. And I share the Pro Tem's
5 perspective that you have and should have an important role in
6 our public education community. But even beyond that, you bring
7 many attributes, obviously from the business community many
8 successes.

9 But what's key, what's important to me, which
10 will be key to my vote is, we are all responsible to the law.
11 As public servants we have a higher scrutiny. It's very
12 difficult. I applaud you for sitting through all this, the
13 criticism, et cetera.

14 So if there is a law, and then you stated it,
15 whether we agree with it or not, we have to implement it. If we
16 don't implement the law, there are consequences for it, but our
17 duty is to implement the law, construct policy to do so.

18 And I think it's just wholly inappropriate to
19 construct policies that we do not believe, that we know not to
20 be consistent with the law. Some will argue that that's
21 illegal. Some will argue that the court order was an effort to
22 make you comply with the law, and the Board to comply with the
23 law; therefore, you guys broke the law.

24 In doing so, you did so with an adverse effect to
25 the very people that we are empowered, obligated, to represent,
26 who would be the parents and the students. And so, it's that,
27 in and of itself, separate from all your attributes and separate
28 from whatever are the arguments about pedagogical strategies,

1 separate from that, it's that in itself that weighs most,
2 because we know that in our society in this state we have a very
3 strict standard about people who comply with the law and don't
4 comply, and there's consequences for that.

5 And you, particularly you, I say to you, with so
6 much capacity, for you to choose that there's a law and we don't
7 want to comply, we break the law. We don't believe the law is
8 just. We don't believe it's convenient. We don't believe it's
9 fairly applied. Sometimes we choose to break the law, and we
10 have consequences for that.

11 Or, we choose as a career, as a profession, to
12 engage in endeavors that change the law. And those would be the
13 two appropriate responses. To do otherwise in your position, I
14 would say, was inappropriate.

15 And that is the sadness. That is the tragedy for
16 which you are as responsible as all of us here, because you have
17 and have had control of your destiny with an impact on so many
18 people, have made such a contribution. Yet you made a choice.

19 And so, I appreciate having met you, and I hope
20 to see you again.

21 MR. HASTINGS: So, apparently my opponents have
22 convinced you that I've broken the law.

23 SENATOR CEDILLO: No, they have not.

24 MR. HASTINGS: You used the word broken the law
25 about ten times.

26 SENATOR CEDILLO: Yes.

27 MR. HASTINGS: So, you would acknowledge that
28 there's no evidence that I've broken the law?

1 SENATOR CEDILLO: No, in fact, I think there is
2 significant evidence. I think there is court order. I think
3 there is a matter of judicial recognition. I think that there
4 is subsequent legislation.

5 In fact, the opponents did not convince me of
6 this at all, nor did they, I believe, did not pursue that
7 argument. In fact, this is, I think --

8 MR. HASTINGS: If it requires subsequent
9 legislation, that might be an indicator that I didn't break the
10 law because it wasn't in place. If you had to pass a law to get
11 it in place it's clear.

12 SENATOR CEDILLO: I understand what you're
13 saying, but let me say this to you.

14 The judicial record speaks for itself. And
15 listening to you, because I heard you say there is the law,
16 whether we like it or not, and then there was our policies that
17 we set forth without explicit direction. And I understand
18 this.

19 MR. HASTINGS: We can differ in intellectually.
20 I'm asking you not to accuse me of breaking the
21 law.

22 SENATOR CEDILLO: I'm not accusing you. I'm
23 recognizing the judicial record, which is a distinction.

24 I believe that you had due process, opportunity
25 to be heard, and a resolution that did not favor you.

26 This is not an accusation. This is an
27 acknowledgement of a judicial conclusion that you and your
28 entire Board, an entity, was outside, exceeded your scope and

1 authority. That's what I'm saying to you.

2 I'm not convinced by what the advocates said
3 with respect to that. And I'm not here to debate bilingual
4 education.

5 My district, at six in the morning you can go to
6 Evans Adult School and see the lines around the block of people
7 who want to learn English: Korean, Vietnamese, Chinese,
8 Philipinos who speak Tagalog, and Latinos who speak Spanish.
9 Caprice Young will tell you that there is a thirst and desire in
10 my district for people to learn English. We all agree on that.

11 But this is a question of leadership, of ethics,
12 and representative democracy.

13 And you are an extremely capable, extremely
14 capable person. And you had choices, and you made those
15 choices.

16 SENATOR ASHBURN: Mr. Chairman, I would say
17 first to my dear friend and colleague, Senator Cedillo, I really
18 believe that we ought to be careful about the standard that we
19 set, because you have voted, as we all have voted as Members of
20 this Legislature, to do various things that are public policy
21 decisions, judgments that we make that have been subsequently
22 litigated, and have been overturned by the courts.

23 And I would never say to you, Senator Cedillo,
24 that in your official capacity as a Senator or as an Assembly
25 Member, that you broke the law in using your best judgment in
26 adopting policies, whether they be through legislation, or the
27 adoption of a budget, that affected the lives of the people of
28 California.

1 And I think the standard that you have set out
2 for Mr. Hastings is unreasonable, and I think it's unfair.

3 Which takes me to the accusation of bias that I
4 heard continuously throughout this hearing today. Mr. Hastings
5 was referred to as a biased individual.

6 There is a vast difference between a policy
7 disagreement, a disagreement over the approach that we might
8 take, and that when we have differences of opinions, that is not
9 bias, it is not discrimination, it is not racism. And
10 Mr. Hastings has never demonstrated racial bias, and yet he has
11 been accused of that in this hearing today. I think it's
12 disgraceful. And I think it has demeaned all of those who
13 uttered the words.

14 The issue before us today is one issue and one
15 issue only, and it is bilingual education. That's the only
16 issue over which there has been disagreement here today.

17 The voters of California, in Proposition 227,
18 expressed their decision on the matter. And the question is,
19 did Mr. Hastings, in his capacity, follow the law? He did.

20 And did Mr. Hastings in the instance of No Child
21 Left Behind follow the law? The fact is that he did.

22 The thing that was amazing to me is that the
23 people who were citing No Child Left Behind and his deviance
24 from the requirements are the very people who opposed that law
25 and continue to oppose that law. You talk about hypocrisy,
26 folks, I saw a lot of it here today.

27 People didn't talk about the accomplishments,
28 high standards, testing, alignment, textbook adoption,

1 institutional knowledge on the State Board of Education.

2 The reason that we test is not to punish. We
3 need to get away from this notion that tests are administered to
4 the students in California for the purposes of punishing them.

5 It is a humanitarian act to test students so that
6 we know what their capacity and their current level of
7 understanding is so that we can help them. That's what testing
8 is about, and I heard Mr. Hastings articulate that view very
9 clearly.

10 It's remarkable to me, unbelievable to me, that
11 in the instance of Special Education, the humanitarian approach,
12 the right approach, is to mainstream students.

13 However, when it comes to English learners, it's
14 not all right to mainstream. Instead, it's preferable to go
15 back to a failed attempt, over decades of failure, of
16 repression, of viewing individuals as incapable of learning and
17 treating them differently for that.

18 And Mr. Hastings ought to be congratulated by the
19 Members of this Committee for standing up to that bias, standing
20 up to that bias and breaking through.

21 This is a remarkable hearing, Mr. Chairman,
22 because evidence has been presented here, overwhelming, that
23 this individual is a remarkable appointment.

24 He understands the law far better than any of us
25 here, and he has applied the law fairly, uniformly, and with the
26 best interests of the students of California.

27 This is a remarkable hearing.

28 I support you.

1 MR. HASTINGS: Thank you, Senator.

2 CHAIRMAN PERATA: Having heard from almost
3 everybody in the room, the Sergeants of course are exempt
4 because they can't be heard from, let me just conclude this.

5 First of all, thank you, Mr. Hastings, for being
6 here. We were in the office hours ago, and we mutually decided
7 that this will be just quick and we'll move on. So much for
8 buying lottery tickets.

9 I just want to tell you that I think -- and I
10 thank everyone for the vigorous debate. I have this funny
11 notion that that's what this government should be about. I know
12 my predecessor sort of free ran things sometimes, but democracy
13 is messy, and it's enduring.

14 I taught school for 16 years, and I went through
15 the track-nontrack, which is basically like immersion. And I
16 taught government, and had this fond notion that the real bright
17 kids ought to be forced to sit in the same classroom with the
18 not so bright kids because they all had a vote, and they were
19 all equal in a representative democracy.

20 But I knew that there was a big difference when I
21 was teaching English in high school. You could not have a
22 nontrack program. And what it really came down to a lot was the
23 psyche of the kids. And when somebody talked about the young
24 child being forced to take a test, that not only tweaks at your
25 heart strings, but it also indicates why we're here. This is
26 really what goes to the heart of the matter.

27 You have a very high octane personality, and I
28 was really glad to have an opportunity to reserve this today

1 because you are certainly capable of well representing your
2 position.

3 The problem as arisen is that many Members
4 believe that we are to represent, to give voice to the
5 voiceless, to represent people who feel but cannot express.
6 Although, the gentleman from Los Angeles who came up here, I
7 think that's a testament to the system and also to you, sir. We
8 need to be able to represent that.

9 And in an era of term limits, what happened in
10 2001 has no bearing on what happens in 2005. There are a lot of
11 different people here. There's a lot to learn, and most of us
12 have very little time to learn it.

13 So, what was really missing in a lot of this was
14 the engagement with other law makers, other people who have
15 their own constituencies, and that's what was missing last
16 year.

17 And I again, I find it regretable that we did not
18 have a chance to do this anew because the outcome, I'm
19 confident, would be different. You may not have gone 29-zip,
20 but it would have been different.

21 And I'm really sorry that we didn't have a little
22 bit more time to convince the Governor's Office that what we
23 thought would be a prudent and well serving -- because I don't
24 care who else they appoint, your record stands for itself.

25 So in conclusion, I want everybody who managed to
26 stay here to walk away recognizing that there's a lot here that
27 has been left unsaid.

28 But when people, elected people and high

1 appointed officials of elected people do not have an
2 opportunity to engage in the dialogue and debate and discourse,
3 and it only really reflects a few people. There are not too
4 many people that I would say, "Let's engage, because we could
5 get to where we need to go." You are one, I believe.

6 I believe Members of my caucus have strong
7 feelings that embrace and go beyond the concerns that were
8 expressed here today.

9 So, I want to thank you again, Mr. Hastings. I
10 want to thank everybody who has been here. You conducted
11 yourselves in an exemplary manner.

12 I hope that we have more discussions like this.
13 I think they're very constructive to our purpose.

14 With that, I would ask to call the roll. We have
15 a motion from Senator Battin.

16 SECRETARY WEBB: Senator Ashburn.

17 SENATOR ASHBURN: Aye.

18 SECRETARY WEBB: Ashburn Aye. Senator Bowen.
19 Senator Cedillo.

20 SENATOR CEDILLO: No.

21 SECRETARY WEBB: Cedillo No. Senator Battin.

22 SENATOR BATTIN: Aye.

23 SECRETARY WEBB: Battin Aye. Senator Perata.

24 CHAIRMAN PERATA: No.

25 SECRETARY WEBB: Perata No.

26 The vote is two to two.

27 CHAIRMAN PERATA: The motion fails, 2-2 and an
28 abstention. So, the record of this decision is not to confirm.

1 With that, thank you all.

2 Thank you, Reed.

3 MR. HASTINGS: Thank you for the hearing.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 5:09 P.M.]

8 --ooOoo--
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CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

19th day of January, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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DON PERATA

CHAIRMAN

December 15, 2004

Lucinda A. Ehnes, Director
Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725

Dear Ms. Ehnes:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as director of the Department of Managed Health Care (DMHC) on Wednesday, January 12, 2005. You are required to appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will help us conduct a more informed discussion with you at the hearing. Please have this information in our office by January 3, 2005.

Questions:

1. *What do you hope to accomplish during your tenure as director of the Department of Managed Health Care? What goals do you have for the department and how will you accomplish them?*

The Merger of Wellpoint Health Systems and Anthem, Inc.

The \$16 billion merger between California-based Wellpoint Health Networks and Indiana-based Anthem, Inc., was finalized on November 30. In addition to having a sizable share of the private health insurance market, Wellpoint has been a large provider of managed care through Medi-Cal, Healthy Families and AIM. In total, there are 7 million California Wellpoint members impacted by the merger.

Questions:

1. *What is your authority to review the merger? Is your authority to conduct a thorough review limited by statute? If so, how?*
2. *What should be the role of the Department of Managed Health Care in the review of significant mergers like the one between Wellpoint and Anthem?*
3. *In your review of the merger, did you find anything that could adversely affect enrollees? What steps did you take to correct or at least mitigate those adverse effects? Are there any adverse effects of the merger that you weren't able to either correct or mitigate?*

Regulatory Jurisdiction Over Health Insurance Products

Under current law, different types of health insurance are regulated by different departments. DMHC regulates health maintenance organizations and some preferred-provider organizations, while the Department of Insurance regulates preferred provider organizations that are not under the jurisdiction of DMHC. The Department of Insurance also regulates traditional indemnity plans and some specialized health plans. The Department of Health Services has jurisdiction over some managed care entities as well, most notably those delivering services through Medi-Cal.

By law, health plans that are licensed through DMHC must cover some services that need not be covered by plans licensed through the Department of Insurance. There are other requirements of DMHC-licensed plans that make the DMHC licensure process more complicated and time consuming than the Department of Insurance licensure process.

Questions:

1. *What problems, if any, does the structure of health-plan oversight create for individual enrollees? Does it ever affect an enrollee's ability to reach or get help from the DMHC Help Center?*
2. *How do the different requirements under Knox-Keene and the Insurance Code affect where health plans go to seek licensure? How much, if any, of the recent trend toward preferred provider organization products and away from HMO products is driven by the relative ease of obtaining licensure under the Department of Insurance? Do you see this trend increasing or flattening?*

High Deductible and Consumer Driven Health Plans

There has been a recent trend in the private health insurance market toward both lower-priced products with high deductibles and lower-priced products that don't include coverage of services that must be covered under Knox-Keene – maternity care, for example. Such products are typically licensed under the Department of Insurance, though DMHC has recently approved a high deductible policy being marketed by Kaiser Permanente.

Proponents of high-deductible and consumer-driven health plans argue that, because they are less expensive, having them on the market makes health insurance affordable to employers and individuals who might otherwise never provide or purchase it. Opponents contend they are replacing plans that did a much better job of delivering health care.

Questions:

1. *What is your view of the trend toward high-deductible and consumer-driven health plans? Should they be regulated differently than current law provides?*
2. *Are there some essential services that should be components of all health plans? If so, what are they?*
3. *Does DMHC have plans to track the consequences that high-deductible policies have on either health outcomes or the rate of health insurance? Would it consider such studies?*

Boards and Commissions

Please provide the committee with a list of the meetings scheduled for this year for the DMHC Advisory Board and the other public DMHC boards.

The Power of the Director to Waive Provisions of Knox-Keene

The California Health and Safety Code allows the director of DMHC to waive provisions of that law at his or her discretion. The authority of a state department to independently select which parts of the law to not enforce raises questions regarding the transparency of the exemption process and the extent to which the public is allowed to comment on proposed exemptions.

Questions:

1. *Is there a formal process at DMHC for granting waivers from Knox-Keene licensure? If so, can you please describe it. If not, should there be one?*
2. *Do you believe that DMHC should have to report waivers to the Legislature or to the public when they are granted? Generally, how is the public supposed to know when a waiver has been granted? Do you believe they have a right to know?*

Prescription Drugs

In 2002, the Legislature approved SB 842 (Speier – Chapter 791). That legislation gave DMHC explicit authority to regulate the prescription drug benefits of any HMO that offered them. Historically, it had been the view of DMHC that they had the authority to do this, but an appellate court decision earlier in 2002 removed that authority. SB 842 directs DMHC to promulgate regulations and to report annually to the Legislature regarding their implementation.

Questions:

1. *What is the status of the SB 842 regulations?*
2. *As director, what criteria do you use to evaluate health-plan drug formularies?*

Independent Medical Review

According to a recent RAND study of managed-care enrollees, health maintenance organizations deny between 8 and 10 percent of patient requests to cover medical services. DMHC statistics show that less than one percent of California HMO patients ultimately pursue independent review.

Questions:

1. *Is the difference between the percentage of denials and the percentage of enrollees who use independent review cause for concern? Is it because enrollees are either unaware or reluctant to use independent review?*
2. *How does the department monitor independent review to ensure that it is neither over- nor under-utilized? Does the department actively advertise the remedy to enrollees?*
3. *Other than the selection process, how does DMHC monitor independent review to ensure that its determinations are fair to both patient and plan?*

Diversity of HMO Enrollees/Cultural and Linguistic Access

Almost 40 percent of Californians speak a language at home other than English. Studies show that the lack of language services affects access to health care services and preventive care, results in greater emergency room use, impedes patients from asking questions and comprehending diagnoses and increases the likelihood of patients missing appointments.

While there are linguistic and cultural-access requirements that apply to government-sponsored health-care programs, including Medi-Cal and Healthy Families, there are no specific standards or requirements on commercial programs. The Office of the Patient

Advocate has collected and reported data on what plans are currently doing along these lines.

In 2003, SB 853 (Escutia – Chapter 713) was enacted to clarify that Knox-Keene health plan licensure standards include requirements for HMOs to provide their enrollees access to culturally and linguistically appropriate health-care services such as trained interpreters and translated documents. It required the department to adopt such regulations by January 1, 2006.

Questions:

1. *What is the status of these SB 853 regulations?*
2. *To what extent should HMOs have a role in ensuring that their provider networks are providing language services and culturally competent care? Do you plan to hold HMOs responsible for ensuring that the networks with which they contract are all providing culturally and linguistically appropriate health-care services?*

Continuity of Care

SB 244 (Speier), enacted in 2003 (Chapter 590), strengthens continuity-of-care provisions by increasing the amount of time a health plan must provide continuity of care, and strengthening patient notification requirements when a provider group is dropped from its network.

Questions:

1. *What is the status of any SB 244 regulations? Can you please share with us your schedule for their promulgation?*

Timeliness of Access

AB 2179 (Cohn) was enacted in 2002 (Chapter 797). It requires DMHC and the Department of Insurance to set standards to ensure that enrollees have access to needed health-care services. For its part, DMHC is required to promulgate regulations that take into consideration the nature of the care, its urgency, the availability of physicians and other factors.

Questions:

1. *What is the status of the AB 2179 regulations establishing standards for health plans to arrange critical medical services?*
2. *What, if anything, has the department done in the interim to improve patients' timely access to health-care services, including specialty and urgent care?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata". The signature is fluid and cursive, with the first name "Don" and last name "Perata" clearly distinguishable.

DON PERATA

DP:DM:dc

Lucinda Ehnes Responses to Questions

WWW.HMOHELP.CA.GOV
1-888-HMO-2219



seeking solutions to the rising costs of health insurance through the California Health Care Quality Improvement and Cost Containment Commission (Cohn - Chap. 672, Stats. 2003), which will convene early this year.

During my tenure at the DMHC, I have been working to ensure that enrollees have access to care when they need it, to improve the quality of care enrollees receive, and to make sure that health care providers are paid promptly for their services.

My goals, which the DMHC is actively implementing, are to:

- Aggressively enforce HMO laws to ensure that HMO consumers receive high quality health care.
- Eliminate cultural, linguistic, racial or disability barriers to health care.
- Ensure that physicians, hospitals, and other providers of health care are paid promptly and fairly.
- Crack down on health plans that operate in a fraudulent or misleading manner.
- Provide financial oversight for the solvency of risk-bearing organizations (medical groups/independent practice associations).
- Gather health plan leaders and stakeholders together to solve health care industry problems through consensus-based processes.
- Continue to strengthen California's leadership role in managed care regulation and policy.
- Reinvent the work of the licensing unit to streamline our processes to review new product offerings that provide affordable health care products to consumers.

Some of our accomplishments to date include:

- Reinforced our commitment to strong consumer protection as Job One of the Department
- Streamlined our licensing process to increase the speed to market for new health products
- Regularly meeting with consumers and convening industry stakeholders – California Medical Association, California Hospital Association, California Association of Health Plans, and California Association of Physician Groups to discuss issues in implementing the prompt payment law
- Established the Provider Complaint Unit to develop and deploy a provider complaint process
- Mobilized several critical regulation packages that were previously stalled - Prescription Drugs, Access to Care, Culturally Appropriate Care, and Financial Oversight of Provider Groups
- Took strong enforcement action against three discount health plans operating fraudulently in California.
- Aggressively investigating plans accused of unfair payment patterns

THE MERGER OF WELLPOINT HEALTH SYSTEMS AND ANTHEM, INC.

1. What is your authority to review the merger? Is your authority to conduct a thorough review limited by statute? If so, how?

WellPoint Health Networks, Inc., a Delaware corporation, (WellPoint), is the parent of Blue Cross of California (BCC) and Golden West Health Plan of California,¹ both licensed by the DMHC. It is important to note that the DMHC did not have the jurisdictional authority to review the merits of the merger of WellPoint into Anthem Holding Corporation. Rather, prior to the DMHC's review, the California Office of the Attorney General approved the WellPoint/Anthem merger and found it did not violate anti-trust provisions.

BCC's request for a change in control of its parent gave the DMHC the authority to review the impact of the merger upon the licensees to ensure, post-merger,² that BCC remained in compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act). The DMHC's authority to review BCC's Material Modification of its license derives strictly from the provisions of the Knox-Keene Act in effect at the time of the transaction. To ensure protection for Californians, the Knox-Keene Act authorizes the DMHC to review the following potential impacts:

- Organizational and administrative capacity
 - Location of books and records
 - Changes in officers, directors, key management, and staffing
 - Changes to the licensee's bylaws and amendments
 - The effect upon current contracts and contractual arrangements
- Health care delivery system
 - Changes to the provider network and provider contracts
 - Changes to delivery systems and plan operations (including location)
 - Quality assurance
 - Utilization management; referral process
 - Grievance system, including independent medical reviews (IMR)
 - Claims processing
 - Information technology systems
 - Changes to marketing and soliciting
- Changes to products, subscriber contracts, benefits/co-payments and subscriber/enrollee relations

¹ The DMHC also reviewed a change in control for WellPoint's subsidiary, Golden West Health Plan of California, a small, specialized plan with little market or financial impact.

² California Code of Regulations, title 28, section 1300.52.4(d) requires that a licensee file a Notice of Material Modification to its license if it anticipates a merger, consolidation, acquisition of a controlling interest, or sale of the plan or of all or substantially all of the assets of the plan, directly, or indirectly. (Section 1300.52(d)(iii))

- Effect of the merger upon the financial viability of the licensees and providers
 - Costs and debt; source of financing
 - The plan's current financial status
 - Access to financial records of any new controlling affiliate
- Nature of transaction (stock, asset purchase agreement, or other)
 - Terms of "agreement" and conditions imposed upon the licensee
 - Approvals required by other agencies, DMHC, subscribers, providers, etc.
 - Effective date of merger
- Current licensee status (medical surveys, financial exams, and enrollee complaints)

2. What should be the role of the Department of Managed Health Care in the review of significant mergers like the one between WellPoint and Anthem?

Ensuring that enrollees receive high quality, affordable health care is always the prime objective in every review. It is also vitally important that Californians have a say in the way HMOs are regulated. Holding public hearings, as the DMHC did when reviewing the Anthem/WellPoint merger, gives the public that needed voice and provides valuable information to the DMHC as it weighs all factors. In addition, the DMHC's role should always include consistently and aggressively enforcing the Knox-Keene Act.

In the case of the merger of WellPoint and Anthem, although the DMHC did not have jurisdiction to approve or disapprove the merger, we did cooperate with the agencies/departments with direct jurisdiction over the transaction in order to:

- Protect enrollees from any adverse consequences, directly or indirectly, from the transaction
- Ensure enrollee access to timely, quality care
- Maintain product availability
- Ensure the financial viability of the licensee
- Preserve the plan's adequate cash and reserves to pay provider claims and debts
- Ensure that, notwithstanding any changes to ownership, the licensee will continue to be in compliance with the Knox-Keene Act after the merger was completed
- Inform consumers about the transaction and any potential adverse impacts

This level of comprehensive review should be the standard for all future reviews.

3.a. In your review of the merger, did you find anything that could adversely affect enrollees? What steps did you take to correct, or at least mitigate, those adverse effects?

Protection of California enrollees was the DMHC's primary concern. Although both WellPoint and Anthem repeatedly maintained that the merger would have no adverse impact on BCC's operations, there was concern that any change in business conditions

could negatively impact consumers. Consequently, the DMHC secured commitments from BCC that it would not change its material operations, products, or provider network. In addition, the DMHC took strong proactive steps to secure written enforceable commitments (“undertakings”) that limited changes to BCC’s operations and required certain affirmative actions, including:

- BCC’s commitment to maintain current products:
 - Paying penalties if current small group or individual products are discontinued
 - Honoring the full contract term for any withdrawn health care products
 - Waiving remaining pre-existing condition exclusions for any enrollee who is required to switch to a new product
 - Offering affected enrollees alternate coverage if a product is withdrawn
 - Annual verification that any increases in co-payments or deductibles are not related to the costs of the merger
 - Annual certification that its methodologies for determining products and benefit designs haven’t changed since the merger
- BCC’s commitment not to increase premiums to offset the cost of the merger:
 - An annual actuarial certification that no portion of any premium increases for small group or individual products include a charge related to the merger³
 - An annual certification that methodologies for calculating premium rates have not changed since the merger
 - Maintaining core functions and all books and records in California⁴
- BCC’s commitment that Californians will have no financial responsibility for the costs of the merger (including executive compensation triggered by the merger):
 - BCC executives waived stock option acceleration provisions triggered by the merger, thereby delaying executive compensation
 - BCC may not increase its current administrative costs
 - BCC may not alter its administrative services agreements with affiliates without the DMHC’s prior approval (protects against indirect upstreaming to affiliates)
- BCC’s commitment to improve quality of care:
 - A 50 percent increase in current spending over the next three years on its quality initiatives⁵
 - Increasing its preventive health care efforts for obesity, mental health, chlamydia screenings, and excessive antibiotic use
 - Expanding its pay-for-performance to encompass individual providers

³The Knox-Keene Act does not authorize the DMHC to set rates; it only allows the Director to enforce premiums for small group products to be maintained between certain ranges and for specific products offered to individuals who have lost health care coverage.

⁴Recently WellPoint announced that BCBS Colorado personnel functions would be moved to California, which will be the regional headquarters now for Anthem West

⁵ This is in addition to 2004’s increase of 75 percent over 2003 expenditures.

- Convening an advisory panel to improve its Quality of Care Report Card scores published by the Office of the Patient Advocate
- Additional enforcement penalties if Report Card scores do not improve
- BCC's commitment to maintain its financial viability:
 - Limits on upstreaming dividends to parent companies
 - Increased cash requirements
 - Increased tangible net equity requirements
 - Prohibition against guaranteeing any affiliate's loans⁶
- BCC's commitment to proactively improve health and health care infrastructure for Californians:
 - A three-year initiative to increase enrollment in Healthy Families and Medi-Cal, including a \$15 million donation for outreach efforts that will be maximized by securing matching federal funds
 - A twenty-year investment commitment of two percent of WellPoint's investment portfolio (or a minimum of \$100 million) to be invested in programs that strengthen health care resources to low-income urban and rural underinsured Californians

3.b. Are there any adverse effects of the merger that you weren't able to either correct or mitigate?

In crafting the undertakings, the DMHC researched the transaction and both companies exhaustively to anticipate any potential adverse effects of the transaction and to mitigate them. At the present time, no potential adverse effects that were not anticipated and addressed in the undertakings have been found.

The merger is in the beginning stages of implementation. Changes impacting enrollees are not expected to manifest before the next 6-12 months. The DMHC will monitor Anthem market and product activity on a routine basis. The DMHC will analyze BCC's annual reports to verify compliance with each undertaking, and will continue to strictly monitor the plan, its operations, and other sources for any evidence of changes.

⁶Anthem's recent 3 billion dollar indebtedness to finance the merger was not guaranteed by BCC or Golden West.

REGULATORY JURISDICTION OVER HEALTH INSURANCE PRODUCTS

1.a. What problems, if any, does the structure of health-plan oversight create for individual enrollees?

All insured Californians should receive the same quality of care and protections regardless of which agency has jurisdiction over their health care providers. A person who is in need of care wants answers, not a referral. Unfortunately, sometimes California consumers are confused about which agency to contact about their health care problems. The California regulatory system is complex, beginning with the split regulatory authority of PPO health care products between the DMHC and the DOI. Furthering this complexity, the largest health care provider in California is Medicare, regulated by the Centers for Medicare and Medicaid Services (CMS), which offer a fee-for-service as well as a managed care option. In addition, there are many self-funded employer health care plans that are regulated by the federal Department of Labor, as well as a host of state health care programs such as Medi-Cal, Healthy Families, and the Managed Risk Medical Insurance Program. Each of these programs has a unique benefit structure and an independent system for addressing consumer problems.

Recognizing the confusion caused by this complex health care delivery system, the DMHC is committed to easing consumer confusion over where to go for help. The HMO Help Center has been designed to accept inquiries from all California consumers, no matter which agency has jurisdiction, and staff have been trained to readily identify the consumer's health care problem, promptly identify which agency can respond, and help the consumer contact the appropriate agency. Further, pursuant to SB 1913 (Speier - Chap.793, Stats. 2002), the DMHC is working in collaboration with the DOI to coordinate consumer assistance outreach efforts. California has been well served by the collaborative efforts of the two departments in reducing consumer confusion over regulatory authority by:

- Developing tools, training staff, and conducting regular meetings between both agencies
- Modifying the DMHC and DOI grievance and consumer complaint processes to reduce misdirected calls and written complaints
- Reducing consumer frustration due to redirection back and forth between departments

A consumer with a health problem wants a solution, not a referral to yet another state agency. Collaborative efforts with DOI have resulted in no consumer wondering where to turn for assistance.

1.b. Does it ever affect an enrollee's ability to reach or get help from the DMHC Help Center?

In furthering DMHC's goal of ensuring that consumers get the right care at the right time, the HMO Help Center provides a single point of contact where consumers can receive maximum assistance with one call instead of being bounced to other agencies. Often, if an enrollee has indicated that he or she has experienced a "run around," a Help Center agent is instructed to include the caller in a three-way conversation with the appropriate agency – providing background, education, and expertise when needed.

On a monthly basis, the HMO Help Center handles between 8,000 to 10,000 calls. The vast majority of those calls do relate to HMO products. Only about 2.5 percent of telephone inquiries received at DMHC relate to products regulated by other agencies. A breakdown of those referred calls follows:

- Department of Insurance – 9 percent
- Department of Health Services – 33 percent
- Department of Labor – 12 percent
- CMS/HICAP – 20 percent
- Other Agencies – 26 percent

2.a. How do the different requirements under the Knox-Keene Act and the Insurance Code affect where health plans go to seek licensure?

The focus of the Knox-Keene Act and the Insurance Code differs. The Knox-Keene Act was specifically enacted to regulate managed care products. The foundation of the managed care model is the timely delivery of basic health care services with an emphasis on preventive care. The Insurance Code was enacted to regulate a host of indemnity insurance products that provide financial protections for consumers, in a wide range of personal and business matters, including losses resulting from fire, automobile, and health-care related expenses. The focus of indemnity health insurance products has traditionally been claims payment and solvency - not comprehensive benefit design or disease prevention.

To preserve the foundation of managed care, Knox-Keene Act licensees may only offer health care products that include all basic health care services and preventive care. Conversely, the Insurance Code grants its licensees broad flexibility in product designs that may result in the more expensive health care benefits being excluded from coverage.

Most of the major Knox-Keene Act licensees also have affiliates regulated by the DOI. Dual licensure allows the parent entity to choose its regulator, while marketing to employers desiring to provide comprehensive benefits, as well as to employers demanding a restricted benefit package with greater employee cost-sharing. Spiraling medical costs, double-digit premium increases, and slow economic growth have

accelerated employer interest in restricted employee health benefits. The cost shift from employers to employees results in an increased demand for less comprehensive coverage to maintain coverage affordability.

2.b. How much, if any, of the recent trend toward preferred provider organization products and away from HMO products is driven by the relative ease of obtaining licensure under the Department of Insurance?

Employer resistance to ever-increasing premium costs is the primary driver of the trend toward scaled-down preferred provider organization (PPO) products. The inability of employers to absorb any further increases in the health care cost of employees causes a natural shift from HMO products to the less stringent PPO product designs routinely approved by DOI. This has caused a noticeable reduction in HMO penetration.

The DMHC is committed to preserving the value of comprehensive health benefits that managed care products and preventive care services provide Californians. Therefore, the DMHC will consider new product designs that preserve the core concepts of managed care, but allow Knox-Keene Act licensees to remain cost competitive, and will expedite the review process for new benefit designs so that Knox-Keene Act licensees can timely respond to market pressures. Balance is the key. Whether enrollees prefer PPOs or HMOs or any other kind of health care option, the DMHC must ensure that California offers the right kind of coverage to fit the needs of as many Californians as possible.

2.c. Do you see this trend increasing or flattening?

As long as annual health care premium increases remain in the double digits, employers will continue to seek alternate product offerings and other cost shifting strategies. The Legislature's Health Care Quality Improvement and Cost Containment Commission (Commission) was established to explore all available options and solutions to these rising costs. It is an honor to be able to work with the Legislature and my fellow Californians on the Commission, to combine our diverse points of view and depth of experience to search for ways to provide health security for California consumers.

HIGH DEDUCTIBLE AND CONSUMER DRIVEN HEALTH PLANS

1.a. What is your view of the trend toward high-deductible and consumer-driven health plans?

My personal view is less important than the growing reality of these products in the health care market place. The proliferation of these products, which combine high-deductible catastrophic health care coverage with tax advantages, poses serious near and long-term risks to the viability of comprehensive benefit products such as HMOs. The

potential negative impact of health savings accounts (HSAs) on the California HMO market must be acknowledged and addressed through proactive policy development.

Indications of impending change include:

- The Medicare Modernization Act included health savings accounts as a product choice in the Federal Employee Health Benefit Program.
- United Healthcare, a strong national managed care plan that does not currently operate in California, completed three recent purchases that, as a package, spell a strong push of these products: purchase of the medical savings account business of Golden Rule Insurance Company, purchase of Definity, Inc., a leader in HSAs and consumer-driven products, and purchase of a bank to manage the financial transactions that underlie HSAs.
- Anthem/WellPoint has indicated a clear intention to be a major player in consumer-driven products and is expected to be offering products much like United Healthcare's in the next product cycles.

Consumer-driven health plans currently make up less than four percent of the California health insurance market; however, a recent national survey found that 80 percent of large employers planned to offer a HSA option in 2005. By far, the vast majority of the products are PPO plans, not HMOs. Because the HMO market in California is structured around large capitation-funded provider groups, the California industry has had difficulty developing and marketing a consumer-driven HMO product. Medical groups and independent physicians associations (IPAs) who are paid capitation for their patient base cannot readily administer a high deductible product. For this reason, the industry is choosing to structure the products as PPO products that use large individual provider networks.

In November 2003, the DMHC conditionally approved one high deductible product, launched by Kaiser on a test basis, and is carefully monitoring it. This topic will be discussed at the next Advisory Committee meeting, planned for February 2005.

Much concern has been expressed about how consumer-driven health plans may affect our current network-model delivery system, whether they will impair quality-of-care improvements, undermine preventive care and chronic disease management, or result in financial turmoil for consumers. I share that concern, yet I would be remiss if I did not consider whether such products fill a gap in affordable coverage for people who may otherwise go uninsured, or for small employers who may not otherwise be able to provide any coverage for their employees.

1.b. Should they be regulated differently than current law provides?

As consumer-driven health plans are relatively new products, particularly in California, careful consideration of their impact to the market and existing laws is imperative. The

current structure of Knox-Keene Act licenses requires a mandated core level of benefits. Some consumer-driven health plans are fairly "stripped-down" in comparison. Some consumer-driven products, like those offered by Definity and Luminos health plans, are a virtual smorgasbord of employee-selected benefits. Almost all of these products have been approved by the DOI and could not be licensed under DMHC because they do not conform to the legislatively mandated benefit structure required under the Knox-Keene Act. Because of the potential impact on California enrollees, I have asked that this topic be placed on the agenda for the next Advisory Committee meeting.

2.a. Are there some essential services that should be components of all health plans? If so, what are they?

One of the core strengths of HMO products in California is the minimum benefit package that all HMOs are required to offer. The Knox-Keene Act enumerates the list of "basic health care services" that must be provided by every health plan:

- Physician services, including consultation and referral
- Hospital inpatient services and ambulatory care services
- Diagnostic laboratory and diagnostic and therapeutic radiologic services
- Home health services
- Preventive health services
- Emergency health care services, including ambulance and out-of-area coverage
- Hospice care

In sharp contrast, PPO products not licensed by DMHC may or may not include all basic health care benefits, and additionally require consumers to pay as much as 20-30 percent of the costs of health care services.

California HMO benefits are relatively rich in comparison to other states that have less stringent standards. Nevertheless, California HMOs have been far more price-competitive than those in other states. In 2004, however, California's HMO premium increases exceeded the national average. This may suggest a new trend toward unaffordability and loss of competitiveness of HMO products.

3.a. Does the Department have plans to track the consequences that high-deductible policies have on either health outcomes or the rate of health insurance? Would it consider such studies?

Absolutely. It is imperative that the DMHC closely monitor the impact these products will have on consumers and the market. In fact, additional product offerings are being considered and if they are approved, the DMHC will track those as it has the one approved product, limiting them to one product cycle of 18 months with an automatic sunset. This topic will be discussed at the next Advisory Committee meeting.

The Legislature's intent, as expressed in the Knox-Keene Act, that health plans should provide accessible, quality care for California enrollees should be taken very seriously. Waivers should be granted only when they further this legislative intent.

There are two statutes that authorize the DMHC to issue exemptions. The Knox-Keene Act gives the Director the authority to exempt a class of persons or health plan contracts provided specific conditions are met, and allows the Director to exempt "for good cause" a plan contract from the requirement that the plan provide all basic health care services.

Most exemption requests are contained in a notice of material modification of the plan's Knox-Keene Act license. The burden of proving the need for an exemption is on the plan, which must show good cause for the requested exemption. A good cause exemption must: 1) be in the public interest; 2) not be detrimental to the protection of enrollees; and, 3) must not be essential to the purposes of the Knox-Keene Act.

2. Do you believe that DMHC should have to report waivers to the Legislature or to the public when they are granted? Generally, how is the public supposed to know when a waiver has been granted? Do you believe they have a right to know?

Waivers from Knox-Keene Act licensure are granted in very limited instances, are matters of public record upon approval, and are accessible to members of the public at any time. These waivers are generally posted on the DMHC website. The DMHC has a subscription service on the website where anyone can sign up to be notified of new postings, including waivers.

PRESCRIPTION DRUGS

1. What is the status of the SB 842 regulations?

SB 842 (Speier - Chap. 791, Stats. 2002) requires that the DMHC establish standards to be used in reviewing a plan's request for approval of its prescription drug benefit offerings. The regulations address co-payments, deductibles, limitations, and allowable exclusions.

Since March 2004, the adoption of this important regulation has been a priority.

- On June 23, 2004, the DMHC conducted a public hearing on preliminary regulatory text, to seek public input.
- On December 3, 2004, a revised draft of the regulations was sent to the Advisory Committee on Managed Health Care for their review and comment.
- On December 6, 2004, the DMHC's final revisions to the preliminary regulatory text were approved by our parent agency (Business, Transportation and Housing).
- On December 6, 2004, the revised regulation package was filed with the Office of Administrative Law to commence the formal rulemaking process.
- The regulation is available for public comment until January 31, 2005.

The formal regulatory process must be completed on or before December 5, 2005. It is anticipated that the preliminary public hearing and the advice of the Advisory Committee will allow the DMHC to complete the formal rulemaking process before that date.

2. As Director, what criteria do you use to evaluate health-plan drug formularies?

The Knox-Keene Act does not mandate that plans provide prescription drug benefits. Because prescription drug benefits are permissive, not mandatory, the DMHC does not evaluate a health plan's selection (formularies) of preferred brands of similarly acting drugs.

The current draft regulations reflect the legislative intent of SB 842 that every health care service plan that does provide prescription drug benefits must provide coverage for all medically necessary outpatient prescription drugs, and may establish co-payments, limitations, exclusions and deductibles. The DMHC's regulatory review focuses on any proposed limitations or exclusions in a plan's offerings of these medically necessary prescription drugs.

As a further safeguard, the Knox-Keene Act requires every health plan that provides prescription drug benefits to maintain an expeditious process by which prescribing providers may secure authorization, approval and reimbursement for medically necessary non-formulary prescription drugs. This process must be filed with the DMHC and provided to the plan's prescribing providers. In addition, the DMHC, as part of its periodic onsite medical survey of each plan, reviews the plan's performance in providing prescription drug benefits, if applicable.

INDEPENDENT MEDICAL REVIEW

1a. Is the difference between the percentage of denials and the percentage of enrollees who use independent review cause for concern? Is it because enrollees are either unaware or reluctant to use independent review?

The primary concern is always enrollee safety – the DMHC works to prevent harm before it happens. The independent medical review (IMR) process is the cornerstone of this important patient right. The DMHC extensively advertises that right to review, and requires a plan to so inform the enrollee any time it denies proposed health care.

Comparatively, the numbers of reviews versus the number of potentially eligible cases is low throughout the country. Researchers have been unable to explain this gap, other than to note that the kinds of problems that trigger IMR requests are relatively infrequent occurrences – in California, IMRs are limited to denials based on whether a requested service is experimental, investigational, or medically necessary, and does not include coverage or benefit issues.

California's IMR statute has eliminated many of the common barriers to seeking a review – fees for filing an IMR application, thresholds in the amounts of services in dispute, multiple and lengthy stages in plan grievance systems, and short time frames to file an application. California does, however, appropriately require an applicant in a non-urgent case to participate in the plan's grievance process before requesting a review.

In the initial two years of the DMHC program for independent medical reviews, an extensive outreach program was used to contact providers, specialty societies, clinical research centers, patient advocacy groups, and support organizations for patients and their families. Some public advertising of the availability of IMR was utilized as well. In addition to presentations, web links, and written materials resulting from DMHC and the Office of the Patient Advocate efforts, information about IMR is prominent on the DMHC's website. This provider-focused website has been developed in cooperation with the Institute for Primary Care Studies at UC Davis Medical School.

However, whether managed care enrollees are aware of the IMR system before they experience a health care problem does not seem to affect use of the review system. Therefore, when grievances are decided by plans, their decisions now include information about IMR, an IMR application, and an envelope addressed directly to the HMO Help Center. The IMR system is detailed in all contracts and each Evidence of Coverage. In addition, all medical group and plan correspondence must include information about IMR and the HMO Help Center. Evidence shows that plans are complying with these requirements, based on information from plan surveys and assessments of every complaint coming into the HMO Help Center.

The DMHC has worked with researchers from RAND who have studied denial and grievance decisions made at the medical group and plan level in California in 1999 and 2000. RAND has also assessed these IMR cases during 2001. Neither RAND nor the DMHC is aware of any other past or current research that would explain why potential IMR applicants do not apply for an IMR.

2. How does the DMHC monitor independent review to ensure that it is neither over-utilized nor under-utilized? Does the DMHC actively advertise the remedy to enrollees?

It's important that IMR use be continually tracked in terms of plans, medical conditions, and disputed services, and that those decisions are used proactively to improve care and access for enrollees. Overall, the types of cases reviewed are comparable to the experiences of similar state programs. According to the RAND research noted above, the types of cases going to IMR comports with what would be expected from disputes with a high level of contentiousness.

The DMHC is working with the Institute for Health Policy Studies at UC San Francisco to identify statistically significant trends and patterns of the IMR decisions, but has not yet gathered a sufficient sampling to make valid conclusions. These efforts will continue and should be increasingly helpful as the numbers of reviews involving similar medical conditions and treatments increase.

The DMHC continues to make extensive efforts to advertise the availability of the program, by making presentations, distributing written materials both through the DMHC and the Office of the Patient Advocate, and through prominent advertisement on the DMHC website. In addition, as noted above, each plan's grievance decision includes information about IMR, as do the contracts and Evidence of Coverage. Medical group and plan correspondence also includes information.

3. Other than the selection process, how does DMHC monitor independent medical review to ensure that its determinations are fair to both patient and plan?

IMR enjoys broad support from consumers and industry because it is generally perceived as a fair and impartial process. The DMHC's role is to oversee the administration of the process and ensure procedural protections to both sides. Consequently, every review is received and reviewed by the DMHC prior to its adoption to ensure procedural fairness. Perhaps most significantly, those with the greatest stake in the outcome – the patient, providers, and the health plan – also receive the written analysis and determinations. Questions or concerns regarding the decisions are presented to the review organization and are addressed by the DMHC.

The review organization then has a complaint and quality assurance system, and both the DMHC and the Clinical Advisory Panel regularly discuss any procedural, policy, or substantive issues raised.

DIVERSITY OF HMO ENROLLEES/CULTURAL AND LINGUISTIC ACCESS

1. What is the status of these SB 853 regulations?

I have asked staff to fast track this and have approved it for the Consumer Participation Program, created by SB 1092 (Sher - Chap. 792, Stats. 2002), allowing the DMHC to reimburse consumer groups who assist in the drafting of the regulation.

The DMHC has met with stakeholders on a number of occasions during 2004, in anticipation of having a draft regulation prepared for public comment early in 2005. Major stakeholders attending these meetings include:

- California Pan-Ethnic Health Network
- Western Center on Law and Poverty

- Mexican-American Legal Defense Fund
- National Health Law Program, Inc.
- Latino Issues Forum
- Asian Pacific Islander American Health Forum
- Health Access California
- California Association of Health Plans
- Individual Plans, including Kaiser, Aetna, Blue Cross and Central Coast Alliance for Health

Plan representatives have offered to provide the DMHC with a summary of their current efforts related to language assistance and the potential cost effects of the regulation. The DMHC anticipates receiving this information no later than January 2005. This information should be helpful in finalizing the draft.

2. To what extent should HMOs have a role in ensuring that their provider networks are providing language services and culturally competent care? Do you plan to hold HMOs responsible for ensuring that the networks with which they contract are all providing culturally and linguistically appropriate health-care services?

Ensuring that enrollees get the right care at the right time includes access to language services and culturally competent care. Current law requires plans to provide timely access to medically necessary health care. To meet this requirement, plans must ensure that their enrollees have access to language assistance during every encounter with a provider or plan member services staff.

The DMHC's Language Assistance regulation will require that all plan-provider contracts comply with the requirement that plans ensure that enrollees have access to language assistance services.

CONTINUITY OF CARE

1. What is the status of any SB 244 regulations? Can you please share with us your schedule for their promulgation?

AB 1286/SB 244, which the DMHC helped to draft, protected almost one million enrollees in 2004. The DMHC's proposed Block Transfer regulation (Title 28, section 1300.67.1.3) specifies the content of the enrollee notice letters that are mailed when a health plan terminates a contract with a provider, and the filing procedure for block transfer plans with the DMHC. The draft regulation was issued on July 30, 2004. Public comment closed on December 1, 2004. A hearing was held on November 30, 2004. The comments received are being considered, and a new draft of the regulation will be

prepared and circulated in the first quarter of 2005, with final text submitted to the Office of Administrative Law by June 15, 2005.

TIMELINESS OF ACCESS

1. What is the status of the AB 2179 regulations establishing standards for health plans to arrange critical medical services?

The expected effective date of these regulations is June 2005. The first public comment period ended November 8, 2004. The DMHC is in the process of reviewing and responding to the comments received from the public. Once this is complete, the regulations will either be revised and sent out for another public comment period, or the final regulation will be sent to the Office of Administrative Law for review and approval.

2. What, if anything, has the DMHC done in the interim to improve patients' timely access to health-care services, including specialty and urgent care?

My primary mission as Director is to ensure that enrollees receive the right care at the right time. The DMHC works to improve patients' timely access to health care services through continued oversight of the enrollee complaint resolution process, improvements to the medical survey process, and licensing function.

HMO Help Center

The HMO Help Center resolves enrollee complaints concerning access to health care. Access-related complaints include formal complaints, urgent case resolutions, and quick resolutions. The urgent cases are reviewed and resolved by the Help Center's Clinical Review Team. These complaints deal with issues that cannot wait for the normal 30-day response goal.

Whenever possible, the Help Center uses a quick resolution process that brings the DMHC, a plan representative, and the consumer together in a three-way call to expedite the resolution and eliminate additional delays. In 2003, for all plans, the HMO Help Center handled 203 formal access complaints, 487 urgent access/referral complaints, and 37 quick resolution complaints concerning medical appointments, for a total of 727 access-related complaints. Data for 2004 should be available by February 2005.

Medical Surveys

DMHC also conducts periodic on-site medical surveys of the health care delivery system of each plan. These surveys include a review of the plan's accessibility standards and procedures for obtaining health services, as well as the overall performance of the plan in providing health care benefits and meeting the health needs of plan enrollees. The DMHC has developed Technical Assistance Guides, which both plans and surveyors follow to assess plan compliance with Knox-Keene Act access requirements. For full-

service plans, surveyors review the following access components, including but not limited to:

- Standards for the number and distribution of primary care providers
- Standards for the distribution of specialists
- Standards for the distribution of hospitals and ancillary care facilities
- Standards for hours of operation and after-hours services
- Plan compliance with established standards
- Plan monitoring of appointment availability
- Enrollee health education
- Plan procedures for standing referral to HIV/AIDS specialists

Monitoring access and availability of providers and services to ensure that medical services are provided in a timely manner is a primary function of health plan operations. In November 2004, the DMHC completed an internal audit of plan compliance to access and availability regulations, the results of which demonstrated areas of concern related to the health plans' inability to meaningfully track and analyze:

- Provider distributions within the network
- Hours of operations
- After hours services
- Appointment availability

Evaluation and analysis of these audit results will provide the basis for the DMHC's aggressive action plans in 2005. Sanctions for continued violations will be imposed.

Survey efforts are not limited to the traditional full-service plans, but include licensed specialized health plans, such as dental and behavioral health. In summer, 2004, DMHC began focused reviews of plan compliance with mental health parity laws. Particular emphasis has been placed on assessing the adequacy of the plan's provider network in providing routine, urgent, and emergency mental health services to adults and children.

Licensing

The Licensing Division reviews health plans' provider network filings to evaluate whether plans have adequate capacity to provide enrollees with timely access to care. For example, in a recent filing in which a full-service plan sought to narrow its hospital network, the DMHC denied the plan's request to eliminate four of 29 hospitals because the plan could not assure reasonable accessibility in portions of its service area without those four hospitals. The DMHC also required this plan to agree to certain undertakings to strengthen enrollee access to care.

Senator Perata
Response to Senate Questions

January 3, 2005
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I hope that this information has been responsive to your request, and I will look forward to the opportunity to share my future plans for the DMHC with the Committee.

Sincerely,



LUCINDA A. EHNES, J.D.
Director
Department of Managed Health Care

LAE/ds

cc: Senator Jim Batten, Vice Chairman, Senate Rules Committee
Senator Debra Bowen, Member, Senate Rules Committee
Senator Gil Cedillo, Member, Senate Rules Committee
Senator Roy Ashburn, Member, Senate Rules Committee
Nettie Sabelhaus, Appointments Director, Senate Rules Committee
Don Moulds, Director, Senate Office of Research

Question No. 1

- 1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Board of education?**

My goal is to stay the course that has been set by the Legislature with rigorous content standards, adopted and standards-aligned instructional materials for all students, high quality teacher training on the instructional materials used in the classroom, a standards-aligned assessment and accountability system, and intervention for schools and students.

I continue to support the universal access specifically incorporated into the curriculum and the instructional materials that allow all students access to the same high quality instruction. English learners and special education students must all be included and for the first time in California, they all have been.

Question No. 2

- 2. Current State Board policy requires all instructional materials funding to be spent on board adopted materials. Many school districts would like to have the flexibility to spend some of those funds on materials that reflect local needs. Would you favor such a change?**

The existing State Board's policy has been superceded by the Instructional Materials Funding Realignment Program enacted by the Legislature in 2002, a law that requires that students be provided with adopted materials in the four core areas (English/language arts, mathematics, history/social science and science) before the district uses instructional materials money to purchase other supplemental materials. I agree that all children need adopted materials in the four core areas.

However, the State Board has provided waivers to high performing school districts allowing them to purchase other instructional materials. I've supported and will continue to support flexibility for those districts that have shown a high level of performance.

Question No. 3

- 3. Constituent groups such as the bilingual education community have in the past felt shut out of meaningful discussion with the Board of Education on matters important to them. With so many new appointments to the Board, what should the Board do, if anything, to help build a more positive relationship with this constituency and other constituencies who may feel similarly?**

In an effort to include the bilingual education community as well as other segments of the English learner community, the board created an English Learner Advisory Committee

(BALC) to advise the Board on issues with specific impact on English learners. Each member of the State Board has one appointment to that committee. The appointments have expired and the Board has held off making new appointments to allow the new appointees an opportunity to influence that committee's membership. I fully support continuation of this advisory body and look forward to working with all groups within the English learner community.

Recently, the Board has involved members of the English learner community, including the bilingual education community, in the revision of the Open Court reading/language arts adapted program and the revisions to the State's Reading First plan. The new Open Court materials should be in the schools by the end of April 2004.

Moreover, for the first time the Board has allowed alternative form Spanish translations of both adopted English/language arts programs for use in Proposition 227 waived classrooms.

Concerning other constituencies, I supported making the report of the Special Education Advisory Commission a standing item on the Board's agenda as is the Curriculum Commission's report. This action was taken in March as part of the first new Board's actions to be more inclusive of all constituencies of the education community.

Question No. 4

- 4. Under California's accountability system, schools that continue to fail academically require ever increasing interventions. The Board has a large role in determining the nature of the Interventions. Does the State have the capacity to intervene when necessary? If not, what do you believe is needed?***

As of January 2004, there are 55 II/USP schools in the SAIT process. There are approximately 1100 schools in Program Improvement (PI) under NCLB. The vast majority of these PI schools are not yet to the stage requiring corrective action. At this time, the Board and Department have the capacity to intervene when necessary.

However, as the proficiency requirements increase under NCLB (all students must be proficient by 2014), the number of schools failing AYP will increase and thus the number of schools in PI requiring intervention will also increase. Because NCLB requires that ALL students reach proficiency by 2014, there will come a time that almost every school will not make AYP and be designated for PI status. This eventuality results from the simple reality that there will always be some child at some grade level in a school that will not be proficient in either math or English/language arts on a particular testing date. With a 100 percent proficiency requirement, the State obviously will not have the capacity to intervene in every school.

II/USP should run its course without the addition of any new cohorts. Because the program allowed the bottom half of schools to volunteer for the program, some schools going into intervention have an Academic Performance Index (API) as high as 750

(remember that the goal is an API score of 800). Because of the broad coverage of the II/USP program it does not function to target scarce resources to those schools most in need of intervention and assistance.

The focus of the High Priority Schools Grant Program (HPSGP) corresponds in large part with PI under NCLB. The Board has been implementing a system under which the School Assistance and Intervention Team model created by the Legislature in II/USP could serve as a common intervention/sanction model for both HPSGP as well as PI. Under this model, there will be much greater capacity to intervene when and where needed. However, once again because NCLB is based on 100 percent proficiency by 2014, there will come a point at which time there will be so many schools not meeting the federal AYP requirements that no State will have the capacity to intervene in them all. This is not a problem limited to California. NCLB will come up for reauthorization beginning in 2007 and I suggest that California seek revisions to the law to accommodate growth model accountability systems rather than the current status model.

Question No. 5

5. *What is the appropriate role for the Board in addressing the problem of persistently low passage rates on the High School Exit Exam for students with disabilities and for English language learners?*

The Board has established accommodations for both special education students as well as English learners to assist them in accessing the test. Although the initial legislation did not specifically provide flexibility for special education students, the Board developed a waiver policy to allow students to receive a waiver of the CAHSEE requirement who otherwise, but for a specific disability, function at a high school academic level. This waiver policy was codified by the Legislature and is now a local school board decision.

Pursuant to Senate Bill (SB) 964 (Burton) the Board approved a request for a proposal (RFP) for an independent consultant to assess options for alternatives to the CAHSEE for special education pupils. The consultant will make recommendations about graduation requirements and assessments for special education pupils. A report from the independent consultant is due by May 1, 2005. The report must recommend options for graduation requirements and assessments, if any, for students with an Individualized Education Program (IEP) or Section 504 Plan; identify provisions of state and federal law and regulation that are relevant to graduation requirements and assessments for students with an IEP or Section 504 Plan; and recommend steps, to the extent necessary, to bring California into compliance with state and federal law and regulations.

I look forward to receiving guidance from this report to assist the Board in addressing the difficult issues involving special education students.

As for English learners, state law provides that if a school district determines that a pupil does not possess sufficient English language skills, the district may defer the requirement

that the pupil pass (not take) the exam for a period of up to 24 calendar months until the pupil has completed six months of instruction in reading, writing, and comprehension in the English language. State law does not provide any other alternatives. The students must pass the exam in English to receive a diploma. However, the pupil may continue to take the exam after high school if necessary. The exam also is offered to adults seeking a high school diploma.

The Board has provided extra time and other accommodations to help English learners access the test. English learners may use glossaries provided in their primary language. The test is not timed so the use of the glossary may assist these students to access the test.

The solution to low passage rates for English learners is high quality standards-aligned instruction. We've seen great improvements in both instruction and test scores since the establishment and implementation of the high school exit exam. The Board should stay the course that the Legislature has established with standards-aligned instruction and intervention, adopted textbooks, teacher training on the adopted programs, testing, accountability and intervention.

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SENATOR GILBERT CEDILLO

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SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to SENATOR BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

MICHAEL L. BROWN, Commissioner
California Highway Patrol

SENATOR KEVIN MURRAY

RANDY A. PERRY

Aaron Read and Associates

California Association of Highway Patrolmen

California Department of Forestry Firefighters

CHIEF JERRY ADAMS, Lodi Police Department, President
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1 JOHN LOVELL

California Police Chiefs Association

2 California Narcotics Officers Association

3 SUZANNA "SAM" AGUILERA-MERRERO, Association President

4 Chicano Correctional Workers Association

5 ED PRIETO, Sheriff

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6 ART ACEVEDO, Vice President

7 National Latino Peace Officers Association

8 JAMES LOMBARDO, Sr.

9 California Motorcycle Dealers Association

10 MAUREEN WINTER, President

11 California Highway Patrol Public Safety Dispatchers Association

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Teamsters et al.

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21 LEE BROWN, Executive Director

California Dump Truck Owners Association

22 PATRICK PAULA LaBRIE

23 AAA Northern California

24 PETE CONATY

25 Pacific Association of Building Service Contractors

26

27

28

1 GARY DOMINGUEZ, Past President
National Latino Peace Officers Association

2 WAYNE BILOWIT, Sergeant
3 Los Angeles County Sheriff, Lee Baca

4 PATRICK W. HENNING, Director
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12 ART PULASKI
13 California Labor Federation

14 CHRISTIE BALMORE
California Professional Firefighters

15 ALLEN DAVENPORT
16 Service Employees International Union

17 TIM CREMINS
18 Operating Engineers, AFL-CIO

19 MIKE ANDERSON
20 United Transportation Union

21 JOSE MEJIA
California State Council of Laborers

22 MEL ASSAGAI
23 Advocacy Group
24 National Association of Women Business Owners, L.A.
Urban League Executives

25

26

27

28

1 LOUIE BROWN

Nisei Farmers League

2 California Grape and Tree Fruit League

California Citrus Mutual

3 LEE SANDAHL

4 International Longshore and Warehouse Union

5 DAVE LOW

6 California School Employees Association

7 TIMOTHY FRIES

8 CAUSE Statewide Law Enforcement Association

9 BRYCE W. A. DOCHERTY

California Medical Association

10 JULIEANNE BROYLES

11 California Chamber of Commerce

12 DANIEL CURTIN

13 California Conference of Carpenters

14 DUNCAN McFETRIDGE

Coalition of Utility Employees in Elevators Construction Union

15 SCOTT WETCH

16 California State Pipe Trades Council

17 State Association of Electrical Workers

Western States Council of Sheetmetal Workers

18 JAMIE KHAN

19 Association of General Contractors

20 JIM ABRAMS

21 California Hotel and Lodging Association

22 MARGARITA E. PEREZ, Chair

Board of Prison Terms

23 ROY MABRY, President

24 Association of Black Correctional Workers

25

26

27

28

1 DAN FELIZZATTO

Former Legislative and Gubernatorial Staffer

2 MATT GRAY

3 California Alliance

4 Voters Corrections Reform Coalition

5 CARL McQUILLION

CEQ, California Alliance for Political Prisoners

6 KEITH CHANDLER

7 Former Prisoner

8 RANDY MATANGI, Member

9 Voters Correction Reform Coalition

10 DAVID WARREN, Member

11 Family Council

12 SARAH CHAPPELL, Psychologist

VCRC

13 CAYENNE BIRD

14 United for No Injustice, Oppression or Neglect (UNION)

15 DR. DONALD MILLER, M.D., Paroled Lifer

16 Consultant/Paralegal, Corrections and Parole Law

17 GAIL BROWN, Member

18 Statewide Family Council

19 ALANE VANNATTER, Former CDC Officer

Families of Prisoners

20 JOY C. ROSS, Paralegal

21 Taxpaying Voter

22 ANSARIAL MUHAMMAD

23 Prisoner's Wife

24 JESSICA D. PAGLIASOTTI

Former Law Enforcement Officer

25 MARY TUNSTALL, Prisoner's Wife

26 Prison Reform Unity Project

27 VCRC

28

1 SUSAN L. FISHER, Member
2 Board of Prison Terms

3 SENATOR BILL MORROW

4 JUDY ROWLAND
5 Former Prosecutor

6 TONI BLOOM, R.N.
7 VCRC

8 BEVERLY BLOOM
9 VCRC

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We are now four-fifths here, at least attendance-wise.

Our first confirmee is Michael Brown, who has obviously brought the right people here to persuade us.

If life wasn't hard enough for what you're about to do, Mr. Brown, Kevin Murray would also like to sit with you and say few nice things. I asked him to come so I could pull him out of Transportation so he wasn't killing the Bay Bridge any more --

[Laughter.]

CHAIRMAN PERATA: -- any more than he has.

SENATOR MURRAY: And as soon as I finish here, I'll be headed right back there.

You'll be happy to know I did not bring one of those long, involved speeches that talked about how he was so wonderful with the Little League, and all of those things.

It's true; I've never needed preparation before, but as a Member of the Legislature for 10 years from Southern California, on the Transportation Committee and as Chair of the Transportation Committee for a --

CHAIRMAN PERATA: Formerly on the Transportation Committee.

SENATOR MURRAY: Formerly on the Transportation Committee, which frankly at this point would be quite an improvement, I have had a significant amount of opportunity to work with Mr. Brown. During all of that time he has been in a

1 significant leadership position at the California Highway
2 Patrol.

3 I just want to say that I have always found him
4 to be forthright, and direct, and honest, and a very good
5 manager of the various divisions he's run. And I can't think
6 of a better candidate. There were a number of candidates for
7 this position. All of them would have been wonderful, but I
8 can't think of a better candidate than Mike Brown to run the
9 California Highway Patrol.

10 I would encourage this Committee to confirm him
11 forth with.

12 CHAIRMAN PERATA: Thank you, Senator. Appreciate
13 that.

14 Last week, our first week, I guess Senator Bowen
15 suggested that we hear from, in addition to the appointee or
16 nominee, that we hear from the public before we ask questions.

17 Is that agreeable? There was a certain logic to
18 it that scares me, but we'll do that. We'll try it again this
19 week and see how it works out.

20 Mr. Brown, welcome.

21 MR. BROWN: Thank you Mr. Chairman and Members.
22 I am Mike Brown. I've been with the Highway Patrol for
23 27-and-a-half years. And I have to say that I am very flattered
24 and, as I said in my statement, very humbled by the opportunity
25 to serve as Commissioner for the Highway Patrol.

26 I stand before you, or sit before you, to have an
27 opportunity for you to get to know me a little better, and what
28 the goals and ambitions that I have for the Department.

1 I believe sincerely that the traditions of the
2 Department were built on the reputations and the efforts of many
3 people who came before me. And this assignment that the
4 Governor has asked me to take on, quite frankly, is a huge
5 responsibility, to carry on those traditions, and to carry on
6 that reputation of the Highway Patrol.

7 We are indeed facing some challenges, many of
8 which you know. Some of them have been public, and I'd be
9 prepared to discuss any of those. But we will deal with those
10 issues in an objective, professional, and forthright manner.

11 I hope, again, to continue the fine traditions of
12 the CHP under my stewardship. Hopefully down the road I'll be
13 able to prepare a pool of candidates to succeed me, either
14 appointed by this governor or some other governor, so that the
15 continued legacy of the Highway Patrol we will be rewarding for
16 the State of California and the people, Mr. Chairman.

17 CHAIRMAN PERATA: Wow! You're going to be a good
18 guy.

19 We will now take brief testimony. This is,
20 unfortunately, not a really controversial guy. If you're
21 looking for a firefight, you're probably going to be
22 disappointed.

23 We'd like those of you who are in support to come
24 forward.

25 MR. PERRY: Mr. Chairman and Members, Randy
26 Perry with Aaron Read and Associates on behalf of Aaron
27 personally. He'd be here, but he's traveling out of town today.

28 We've worked with Mike, Commissioner Brown, for

1 many years when he was assigned State Capitol in the Legislative
2 Unit. We worked with him. He proved always to be a very hard
3 worker and very honest, wanting to do the right thing for the
4 agency.

5 On behalf of the men and women of the California
6 Association of Highway Patrolmen, they fully support him, as
7 well as the California Department of Forestry Firefighters and
8 PORAC. All the members support his confirmation.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 CHIEF ADAMS: Mr. Chairman, Members of the
12 Committee, I'm Chief Jerry Adams of the Lodi Police Department,
13 the real wine capital of the State of California.

14 I'm also the President of the California Peace
15 Officers Association. We represent approximately 4,000 line
16 level to chief executive officers in the State of California,
17 which encompass local, county, state, and even some federal
18 officers, which represent approximately 500 law enforcement
19 agencies within the state. CPOA really does represent the
20 breadth and scope of law enforcement in the State of California.

21 We are dedicated to professionalism within this
22 state, and we couldn't think of a better candidate for
23 Commissioner of the Highway Patrol than Michael Brown, who has
24 served this state for 27 years, done an excellent job in our
25 opinion.

26 I had a conversation this morning with a
27 commander of the L.A. County Sheriff's Office who worked with
28 Mike on the Inoperability Study, and L.A. County couldn't say

1 enough about him as far as what he did to help them with their
2 radio systems, and how professional the Highway Patrol was
3 working with other agencies.

4 And really, in the final analysis, that's what
5 this is all about, is how we all work together to make this
6 state as safe as we can.

7 So, on behalf of the men and women of the
8 California Peace Officers Association, we want to wholeheartedly
9 give our support to Michael Brown as Commissioner of the Highway
10 Patrol.

11 Thank you for the honor of appearing before you.

12 CHAIRMAN PERATA: Thanks for coming, Chief.

13 MR. CURRY: Mr. Chairman, Paul Curry, retired
14 Lieutenant, San Bernardino County Sheriff's Department, now with
15 Paul Curry and Associates.

16 On behalf of myself personally, I would like to
17 offer my support for Michael Brown. When I was with the
18 Sheriff's Department, we had opportunities to work together
19 while he was working in the Legislature, and even after, and
20 found him always to be very fair, and always have the highest
21 integrity. And that's what you're really looking for, is
22 someone who has that honesty and integrity to lead a big
23 department such as the Highway Patrol.

24 Also, my recent clients, the California
25 Correctional Supervisors Association, asked me if I would also
26 place their endorsement for Michael as well.

27 Thank you.

28 CHAIRMAN PERATA: Thank you.

1 MR. LOVELL: Mr. Chairman, Members of the
2 Committee, my name is John Lovell. Among my law enforcement
3 clients are the California Narcotic Officers Association and the
4 California Police Chiefs Association. They join with the
5 California Peace Officers Association in strongly supporting
6 Mike's candidacy.

7 I've known Mike personally since 1992, and he is
8 just in the highest standards of public service. This is an
9 outstanding appointment. This guy will bring pride to the
10 Highway Patrol and to the State of California.

11 CHAIRMAN PERATA: Thank you.

12 MS. AGUILERA-MARRERO: Good afternoon,
13 Mr. Chairman and Members of the Committee. It's an honor to
14 speak before you. My name is Suzanna Aguilera-Marrero. They
15 call me SAM for short. I am the President statewide for the
16 Chicano Correctional Workers Association, CCWA for short.

17 I am here representing the 2500-plus members of
18 the Chicano Correctional Workers Association in support of the
19 endorsement, and we hope that you approve his endorsement today.

20 I'm going to go ahead and leave a letter that
21 I've written and a copy, and also my business cards in lieu of
22 the fact that we have all new Members. I am available at your
23 discretion and at your convenience to meet with you and assist
24 in any way that I can or our organization members.

25 Thank you for your time.

26 CHAIRMAN PERATA: Thank you.

27 She set nice precedent. She had a letter but she
28 didn't read it. So, let that be lost on no one.

1 [Laughter.]

2 CHAIRMAN PERATA: You, however, are carrying a
3 gun, so what do you need?

4 [Laughter.]

5 SHERIFF PRIETO: I'm Sheriff Prieto, called
6 Little Ed.

7 I've known Mike most of his career as an
8 ex-member of the California Highway Patrol. I served with the
9 CHP for approximately 31 years and retired as a captain and
10 became Sheriff subsequent to that.

11 I know Mike not only in a professional level but
12 also a personal level. My wife, who is also a California
13 Highway Patrol officer, Assistant Chief, had the honor of
14 working for Mike, and she speaks extremely highly of him. And
15 if my wife says he's a good man, you can rest assured he's a
16 good man.

17 But I do have a great deal of respect for Mike,
18 and I think the Highway Patrol can only go in one direction, and
19 that's up. He has a tremendous amount of integrity. And as you
20 heard, not only myself but those that are, I'm sure, going to
21 echo my sentiments, I think that a wonderful choice was made.
22 Just like any other sheriffs, I'm sure he gets a great deal of
23 support not only from me but from other sheriffs' departments.

24 Again, I strongly endorse Mike, and I wish him
25 nothing but the best. Thank you very much.

26 CHAIRMAN PERATA: Thank you, Sheriff.

27 MR. ACEVEDO: Good afternoon. My name's Art
28 Acevedo. I'm the Vice President of the National Latino Peace

1 Officers Association, which is the largest ethnic minority
2 advocacy group in law enforcement in the United States and
3 probably one of the older ones.

4 It's an honor for me to be here this afternoon on
5 behalf of Hank Aguilar, our State President. He would be here
6 himself, but he's dealing with the death of a deputy in Los
7 Angeles in the train derailment this morning, and our past
8 National President's dealing with the funeral of one of our
9 members, actually founders.

10 So, we have known Commissioner Brown for many
11 years. And the cornerstone of the law enforcement
12 professional's got to be integrity, and without integrity and
13 ethics, you have no business there. And I can tell you from our
14 dealings with him, and my personal dealings with him, that you
15 will find no one with a greater sense of integrity, and most
16 importantly, with a greater sense of fairness.

17 Mike has always shown an interest in reaching out
18 to the diverse communities served by the California Highway
19 Patrol, both socio and economic. And I believe that hopefully,
20 with this confirmation today, you will empower him to continue
21 to reach out to these communities and to be a uniter and not a
22 divider.

23 We look forward to working with him, and we urge
24 you to confirm him this afternoon. Thank you for your time.

25 CHAIRMAN PERATA: Thank you, sir.

26 MR. LOMBARDO: Mr. Chairman and Members of the
27 Committee, Jim Lombardo on behalf of the California Motorcycle
28 Dealers Association. We're not a law enforcement group.

1 I've known Mr. Brown since 1992. We've worked on
2 various legislation together. The Department does interface
3 with business on a lot of occasions, and he and the Department
4 have been outstanding in trying to listen to our concerns as
5 business on how to do our business. As an example, the
6 California Motorcycle Safety Program, it's an award winning
7 program, nationally recognized, winning ten awards for the
8 safety and training of drivers on the road, and it's been
9 enormous in reducing the number of fatalities and accidents of
10 motorcycle riders.

11 We hope to have a continued working relationship
12 with him.

13 CHAIRMAN PERATA: Thank you.

14 MR. LOMBARDO: Thank you.

15 MS. WINTER: Good afternoon Mr. Chairman,
16 Members of the Committee. My name is Maureen Winter. I am
17 President of the Highway Patrol Dispatchers Association.

18 I've had contact with Mike at times during his
19 career. He's always shown that he's concerned with the
20 Communications Division.

21 I support his confirmation and hope that you do
22 the same.

23 CHAIRMAN PERATA: Thank you.

24 MR. MAGNANI: Mr. Chair and Members, I'm Bruce
25 Magnani with the California Chamber of Commerce.

26 We would like to support Mike for his nomination
27 to California Highway Patrol Commissioner. We've worked with
28 Mike in the past. We think his level of commitment to public

1 service is unmatched, and his level of integrity unequaled.

2 So, we support his confirmation. Thank you.

3 CHAIRMAN PERATA: Thank you.

4 MS. MATTOS: Mr. Chairman, Members of the
5 Committee, my name is Deborah Mattos, Mattos and Associates.
6 I'm here both personally and for all of my transportation
7 clients who've worked with Mike since 1992.

8 I can honestly say that he's extremely honest,
9 his integrity is of the utmost. And he is one of the few people
10 that can actually sit down and bring all the parties together on
11 all the difficult legislation that we frequently have to work
12 on, and he does it in a very fair way, and people can actually
13 leave the room and get something done and be friends.

14 Thank you very much.

15 CHAIRMAN PERATA: Thank you.

16 MS. GROSSEN: Good afternoon. My name is Susan
17 Grossen, and I'm a Public Safety Dispatch Supervisor I for the
18 State of California Highway Patrol. I'm representing the
19 Coalition for Communications Supervisors, and we fully support
20 Commissioner Brown.

21 CHAIRMAN PERATA: Thank you.

22 MS. SANCHEZ: Liberty Sanchez, Law Offices of
23 Barry Broad, representing the Teamsters.

24 I'd first like to apologize that Barry cannot be
25 here, but he's defending the honor of organized labor in the
26 Assembly Labor Committee right now.

27 He wanted me to make sure that I said that
28 Commissioner Brown is a man of the highest integrity with whom

1 Barry has worked very closely in past years.

2 The Teamsters are fully in support of the
3 Commissioner's confirmation because CHP is kind of the
4 equivalent of OSHA to the truck drivers we represent, and so we
5 strongly support him.

6 CHAIRMAN PERATA: Thank you.

7 MR. ELLISON: Thank you, Mr. Chair and Members.
8 Brooks Ellison on behalf of two organizations: the California
9 Tow Truck Association and the California Dump Truck Owners
10 Association; 1500 members of the Dump Truck Association, and
11 800 members of the Tow Truck Association, both heavily regulated
12 industries.

13 We surveyed our membership, and overwhelmingly
14 they seek the confirmation and say that the Commissioner has
15 integrity, has fairness, and is able to balance the interests of
16 both the motoring public with industry.

17 They encourage your support. Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MR. BROWN: Lee Brown with the California Dump
20 Truck Owners Association, Executive Director. Brooks' our
21 lobbyist.

22 We support 100 percent Mr. Brown's confirmation.
23 One story real quickly.

24 We were at the DMV this morning, the Motor
25 Carrier Permit Branch. And we were talking about partnership
26 and moving forward. And they had mentioned to me that Mr. Brown
27 established quarterly meeting between them, Caltrans, to develop
28 ways to really support, and expedite, and make it efficient.

1 Enforcement and industry working together.

2 We support the confirmation. Thank you.

3 CHAIRMAN PERATA: Thank you.

4 MS. LaBRIE: Good afternoon, Mr. Chair and
5 Members of the Committee. My name is Paula LaBrie, and I'm the
6 lobbyist for AAA of Northern California. We are an organization
7 that has been around about a hundred years, and we share the
8 common goal with CHP of wanting to keep our motoring public
9 safe.

10 In our capacity, we have had many opportunities
11 to work with Mr. Brown. The people in our main office and who
12 know Mr. Brown support him highly. We certainly would like the
13 confirmation.

14 Thank you. We think very highly of him.

15 CHAIRMAN PERATA: Thank you.

16 MR. CONATY: Good afternoon, Members. My name
17 is Pete Conaty, from Pete Conaty and Associates. I'm here on
18 behalf of just myself.

19 I first met Mike when I was a legislative staffer
20 in 1992, when he was legislative liaison. I had several
21 dealings with him, and the Member I worked for carried bills on
22 behalf of the California Trucking Association.

23 He is absolutely the right man for the right job
24 for the Legislature and the Governor at this time, and I can't
25 say enough about him.

26 Thank you.

27 CHAIRMAN PERATA: Thank you, Pete.

28 MR. DOMINGUEZ: Respectfully, Mr. Chair and

1 Members of the Committee, my name is Gary Dominguez. I'm a past
2 National President of the Latino Peace Officers Association. I
3 am also currently a deputy chief with the California Highway
4 Patrol, and it's my honor to appear before you and represent the
5 members of the -- the past and present members of LPOA and
6 current members of CHP's top management.

7 You have a letter in your package we have all
8 signed, and we are fully in support of Mike Brown as
9 Commissioner.

10 Thank you very much.

11 CHAIRMAN PERATA: Thank you.

12 MR. BILOWIT: Good afternoon. Sergeant Wayne
13 Bilowit here on behalf of Los Angeles County Sheriff, Lee Baca,
14 who was on his way up here. He was in Burbank at the time of
15 the tragic train collision, and obviously he has duties down in
16 Glendale to attend to.

17 But he wanted me to express to you his absolute
18 support for Mike Brown for Commissioner of the Highway Patrol.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 This is a silly question, but is anybody in
22 opposition? Seeing none, Members? Senator Bowen.

23 SENATOR BOWEN: Thank you.

24 You had quite a diverse group here, so it leads
25 me nicely into just a couple of questions that I had that
26 you and I talked about briefly.

27 One has to do with diversity in the CHP in the
28 leadership and management structure. I think there are several

1 women Legislators who've been concerned about a plastic ceiling
2 if not a glass one. I think probably the same is true for
3 minorities.

4 I wonder whether you have plans to look
5 specifically at those issues, and how you plan to deal with
6 making sure that the CHP reflects the population of California,
7 which of course makes it more effective as a law enforcement
8 agency?

9 MR. BROWN: Yes, senator. In fact, that is a big
10 issue for us.

11 I've looked at the demographics in our
12 Department, and it really starts at the very beginning, because
13 you have to draw from that candidate pool by statute to promote
14 people up. And what bothers me is that frankly, although we've
15 tried a lot of different things, and we do have representation
16 at all levels, I don't think we're where we need to be. And we
17 are certainly not representative in terms, at all levels, with
18 the California labor force. It's generally most of the
19 Department looks like me, quite frankly, and that's
20 unsettling.

21 One of the things that we have done in the past,
22 and we are going to be looking at in the future, is how we're
23 going to change that. We have a very nominal budget for
24 recruiting. We have commissioned our people in our staff
25 assignments who deal with recruiting, and our top management, to
26 look at it.

27 I've also challenged our Citizens Advisory
28 Committee to look at that very issue and come up with

1 recommendations. And this committee is a very ethnically
2 diverse group of folks who are in the business world and
3 political leaders in their own right who have come forward and
4 participate and volunteer their time to give us advice in terms
5 of how we deal with a lot of issues, this one being paramount.

6 So, if we can in fact effect a change at the
7 bottom end and increase the pool, as I mentioned, and we can at
8 the same time develop, as I mentioned, the leadership for
9 tomorrow in this Department -- and part of that is also looking
10 for the representation, giving the people that are there the
11 opportunity to grow and then move forward accordingly.

12 We expect within the next 30 to 60 days to have
13 an actual plan together, based upon the challenges that are
14 there. And hopefully, the input by the oversight committee or
15 the Advisory Committee at that point, and putting those
16 together, we will have a spending plan also put in place for the
17 next fiscal year so we can move forward.

18 One of the things we've actually talked about is
19 seeing how we could use maybe outside assistance, professional
20 assistance, marketing into the communities we need to market
21 into. As I'd mentioned to you in our prior conversation, when I
22 first went down to Los Angeles in 2000, only five people had
23 reached the CHP Academy from the Los Angeles area in the
24 preceding three years. That to me was unacceptable. That is
25 probably the largest single concentration of a culturally
26 diverse community that we have in California. There are other
27 culturally diverse communities as well.

28 But we changed that. It took us about 18 months

1 to 2 years, and were then looking at about 30 to 35 percent of
2 the Academy classes were coming from Los Angeles. So, I know it
3 can be done, and we have to channel that across the board.

4 And I will commit to this Committee, and I'll be
5 happy to come back to you with information to show what we're
6 doing and how our success is.

7 SENATOR BOWEN: Great. Thank you for that
8 commitment.

9 My only other question has to do with what will
10 undoubtedly be your greatest challenge during your tenure, and
11 that is dealing with the allegations that some CHP officers have
12 misused the disability retirement system.

13 Can you talk a little bit how you are dealing
14 with that situation, and how you plan to assure the public,
15 public confidence in the disability retirement system at the
16 California Highway Patrol?

17 MR. BROWN: Yeah I'd be happy to respond to that.

18 If I could preface my remarks to start with, the
19 Workers' Compensation Program as I see it as it applies to
20 public safety employees is designed to get people who are
21 legitimately hurt, you know, putting themselves at risk in the
22 public safety environment, getting them treatment, and getting
23 them back to work as quickly as we possibly can.

24 And quite frankly, Highway Patrol people suffer a
25 huge exposure rate. It's evinced by the number of officers that
26 have been killed in the Highway Patrol over our 75-year
27 history, and also by the number of the people who I visited,
28 frankly, on gurneys in emergency rooms who have been hurt.

1 Now, having said that, I was as disturbed as
2 everyone else with respect to the series of articles that
3 discussed the Department's use -- or the employees' use of the
4 Workers' Compensation Program. In fact, the second question I
5 received at my press conference when I was announced as the
6 Commissioner dealt with that very issue.

7 Within 45 days, we produced a report to the
8 administration which discussed a number of things which we saw
9 that we needed to fix inside the Department, as well as things
10 that we need to address on a bigger and a broader issue.
11 That -- by the way, that particular report, I believe, a copy
12 of it has been provided to the staff. We also have it available
13 on the web site. But in essence this is it. We spend \$69
14 million and some change a year on Workers' Compensation; \$8.1
15 million of it is administrative fees charged by the State
16 Compensation Insurance Fund under contract; \$29 million and some
17 change is directly related to medical costs related to injuries.

18 We went back and looked at all of our disability
19 retirements to the year 2000 through the year -- up to 2004,
20 this last fall. And of those, they were all, in essence,
21 legitimate except for about 35 which we needed additional
22 information on.

23 What troubles me is the perception, and frankly,
24 some of the cases that we are still looking at in terms of
25 whether or not there's abuse or fraud. Now the difference
26 between the two was actually placed in the Sacramento Bee,
27 curiously enough, when they discussed that fraud is a very
28 difficult standard to prove.

1 As we all know, last week -- and this was not
2 having any relation to this particular event -- but last week we
3 tragically discovered that one of our people had committed
4 enough activity which warranted the District Attorney in Kings
5 County to take before the court and seek an arrest warrant for
6 11 counts of Workers' Compensation fraud. I was briefed on
7 that, and they asked me what I wanted to do. I said execute the
8 warrant.

9 We are not going to tolerate abuse. It
10 jeopardizes not only the protections that are there for our
11 employees, but the protections for other public safety employees
12 when they need it.

13 And I think with some of the things that we've
14 identified in our report that we are working towards, which
15 include the recreation of the Workers' Compensation Fraud Unit,
16 recreation of it, mind you, which -- by the way, this case we
17 had last week was the first one that was brought before the
18 court as a result of their actions. They are currently
19 reviewing every Workers' Compensation claim that's filed in the
20 Department as a matter of recourse so that we can see whether or
21 not there's any indication or any indices which we'd consider to
22 be abuse or fraud, and we will look into those.

23 Moreover, we've been working with the California
24 Association of Highway Patrolmen, and trying to find common
25 grounds on where we can get people back to work in a timely
26 manner. We're watching and working very closely with the
27 adoption of the laws and the impact of the laws that came into
28 effect 01/01 of this year to see exactly how -- the impact it's

1 going to have on our costs in terms of Workers' Comp.

2 We also have some legislative proposals that the
3 administration is currently looking at, and we hope to get those
4 back sometime soon. We've had some discussions with him.

5 But these are all part of the serious nature that
6 we view this particular issue. And I'll tell you from a very
7 managerial standpoint, aside from the ethical questions that it
8 raises, the \$69 million that we utilize, it's not budgeted; it's
9 not a line item. That comes right out of our operations, that
10 \$69 million, in fewer officers I can put on the street. So,
11 there's a huge incentive for myself and the other managers in
12 the Department to reduce that cost so that we can in fact put
13 more officers on the streets so we can serve the public even
14 better.

15 SENATOR BOWEN: Thank you. Again, I appreciate
16 your commitment to that.

17 Historically, California, the Highway Patrol and
18 our law enforcement agencies have had a reputation that is
19 really unmatched in most other states. There's very little
20 misconduct of any nature in California law enforcement. Some of
21 my colleagues in other Legislatures in other states have asked
22 how we do that. I can't answer that, because it's really the
23 people.

24 But I think we're in a situation where the press
25 attention to a few cases that are problematic really tarnishes
26 the star of law enforcement. So, I think you've correctly
27 identified the problem as being one that's a problem to anyone
28 who wears a badge. That should be a badge of honor and never

1 questioned.

2 MR. BROWN: Absolutely.

3 SENATOR BOWEN: Thank you for your work in that
4 regard.

5 MR. BROWN: Thanks, Senator.

6 CHAIRMAN PERATA: Senator Ashburn.

7 SENATOR ASHBURN: Mr. Brown, I want to pick up on
8 the subject of disability retirements and the so-called Chief's
9 Disease. And I'm not going to ask you to outline for us today
10 any specifics.

11 But I'm going to request of you that you provide
12 to the Legislature as quickly as possible your best
13 recommendations for changes that can be made both
14 administratively, which I would anticipate you would act upon,
15 and those that require legislative action to end the abuse of
16 the disability retirement system.

17 And I want to underscore that it is not just the
18 chiefs. Although we have an extraordinary percentage of upper
19 management that are leaving on disability retirement, this is
20 widespread throughout all Highway Patrol personnel, that the
21 percentage of individuals who are ultimately disabled on a
22 medical disability is astounding. It is alarming. It is
23 incomprehensible that that number of personnel can be qualified
24 and fit for duty one day, and be unfit for duty and medically
25 disabled the next.

26 It's got to stop because, as Senator Bowen very
27 articulately stated, the reputation of every Highway Patrol
28 officer is tarnished in this kind of an abuse.

1 So, I would welcome any comments you might want
2 to make with respect to that request of mine.

3 MR. BROWN: Senator, I'd be happy to do that
4 because quite frankly, this has become a public debate. It's a
5 very embarrassing debate for our department, and I personally am
6 embarrassed to even have to address it.

7 But having said that, the perception is real.
8 And I think the only way to address it is frankly in a very
9 public manner.

10 So, I'll be happy to provide reports on our
11 internal stuff that we're doing to try and tighten it up, which
12 by the way are laid out in our Workers' Compensation report. We
13 are currently working on every one of those, some of which we've
14 actually completed, for example, the creation of the Workers'
15 Comp Fraud Unit.

16 I will not, unless, obviously for obvious
17 reasons, discuss ongoing investigations. I do not want to
18 jeopardize criminal prosecutions should that take place.

19 But I will certainly be happy to talk about our
20 administrative things, and the progress we're doing in trying to
21 correct that thing internally under the existing law.

22 SENATOR ASHBURN: One idea that seems to make
23 some sense would be to limit the ability of employees who are
24 medically disabled to become subsequently employed by another
25 agency.

26 MR. BROWN: In fact, one of the recommendations,
27 Senator, if I may, was that that actually have an offset so that
28 the disincentive would be in place for that. So that if an

1 officer does, or an individual does retire from the Highway
2 Patrol and engages in peace officer activity subsequent to that,
3 and there would be an offset in the retirement issue. That's
4 one thing that we've recommended in our original report.

5 Again, these are things that we think need to be
6 looked at. We have sent them forward to the administration, and
7 I understand they are under review at this time.

8 SENATOR ASHBURN: I appreciate that, and I'll
9 look forward to, again, whatever detail you wish to provide on
10 specific recommendations that can be taken administratively, and
11 which require legislative action, because this is a matter on
12 which this Legislature must act and expeditiously.

13 The other point I wanted to raise has to do with
14 safety to the motoring public. Unfortunately, in California we
15 are not building highways. We're not improving capacity. We're
16 not replacing the bridges and the other infrastructure to ensure
17 the safety of the traveling public. So, it becomes incumbent
18 upon you and your officers to do what you can to improve safety
19 for the public, given an inadequate road system.

20 So, I wondered if you would comment on that
21 concern and ways that you might go about addressing it?

22 MR. BROWN: Again, Senator, I thank you for that.

23 We've actually started down that road, if you'll
24 pardon the pun. This last fall, we actually looked at our
25 mission statement. We went back to the basics and said, what
26 are we doing? What are we charged with doing? What does the
27 statute say we're supposed to be doing? What are our additional
28 responsibilities that we've picked up?

1 And the bottom line for us is, and we've taken it
2 into our mission, is basically three words: Safety, Service,
3 and Security. And the principle goal for us is to save lives.
4 Last year we lost over 4,000 people provisionally in the State
5 of California; 2600 of them occurred on people here on the
6 roadways in CHP jurisdiction. That's a huge loss.

7 And I've had the unfortunate privilege of making
8 death notifications for traffic related issues, and issues not
9 related to traffic. And I'm here to tell you that there is no
10 difference to the family you're speaking to in the living room
11 in terms of that sudden death.

12 So, we're dedicated to that. We have
13 re-dedicated ourselves to that, and we've set legitimate -- in
14 fact, in some cases some people have said rather optimistic
15 goals, but I think we need to do that. For example, 50 percent
16 of the people that were killed last year were not wearing a seat
17 belt. If we could increase people just wearing the seat belt
18 through education and/or enforcement, we may save thousands of
19 lives.

20 We had a third of the people involved in DUI, a
21 third of the incidents involving driving under the influence.
22 And speed was related in almost 60 percent of them.

23 And so, we have asked that our commanders look at
24 reducing fatalities and injuries in the year 2005 by 5 percent,
25 to increase seat belt compliance by 5 percent so we can save
26 lives.

27 And that's an ambitious goal; we understand that.
28 We may not make it. But doggone it, we're going to give it

1 everything we can to get there, because I don't want to have
2 anyone of us, or someone in the Coroner's department making a
3 notification like I've had to do.

4 SENATOR ASHBURN: Thank you.

5 And related to that, the Safety Corridor Program
6 that the Highway Patrol has provided on specific segments of
7 roads and highways in California is extremely important, and it
8 becomes an internal administrative decision that you will have
9 to assure that there is funding available to do those corridor
10 studies and to implement safety improvements. I applaud that
11 effort and would encourage you also to take the administrative
12 steps so that funding will be available as needed for that.

13 MR. BROWN: In fact, Senator, I just had a chance
14 to look at our draft, and we are continuing with the corridor
15 projects under major grants under the three areas that we're
16 talking about. And frankly, almost all those corridors that
17 we're talking about across the state have usually either DUI or
18 speed involved. So, we'll continue with that.

19 SENATOR ASHBURN: There's no doubt about that.

20 Thank you very much.

21 MR. BROWN: You're welcome, Senator.

22 CHAIRMAN PERATA: Senator Battin.

23 SENATOR BATTIN: I just have a very easy one.

24 Senator Aanestad had some serious concerns over
25 the placement of the helicopter in Auburn. I know that you have
26 been discussing that with Sam, and I'm just wondering if you
27 have addressed those concerns.

28 I did see that he wrote a letter of

1 recommendation for you, which is, knowing Sam and his passionate
2 position on this issue, is a great triumph for you.

3 So, if you could just address that.

4 MR. BROWN: Actually, the Senator -- I had an
5 opportunity to meet with the Senator on that particular issue.
6 He shared with me a memorandum going back to the late '80s,
7 early '90s, discussing the reason for the move of that aircraft,
8 the aircraft up to Auburn, which I thought was somewhat ironic
9 in that I actually wrote the particular memo for the chief to
10 sign, so I was very familiar with the issue.

11 The Senator's issue with the Auburn area is
12 actually folded into a larger issue that we discovered when I
13 went through and talked to all the chiefs across the state. We
14 wanted to look seriously at our air operations program, and we
15 wanted to make sure that we were assigning the type of aircraft
16 for the type of mission across the state, and make sure that
17 we're doing it right and cost effectively. We've also included
18 in that the particular issue of the Auburn location versus the
19 current location, which is down here at the Sacramento Executive
20 Airport.

21 Staff came up two weeks ago to brief us on that.
22 We asked them for some additional information. We have not let
23 it go. We will continue to find that and hopefully resolve that
24 thing very soon.

25 But it's folded into a larger issue dealing with
26 Homeland Security issues, transportation safety and security
27 issues, and we have a lot of adjustments or a lot of concerns
28 across the state.

1 Frankly, aircraft may be some of the best ways to
2 help us. So, we need to look at that in a more global
3 perspective.

4 I've committed to the Senator that once we
5 discuss this, I will go over and meet with him, describe exactly
6 and objectively what's there, and what our decision was.

7 I will tell you, having tried to fly out of
8 Executive Airport last month several times and not being able to
9 get out because of the fog, his concerns are indeed legitimate.
10 But I want to make sure that we do something, whatever we do, in
11 a very reasonable and cost effective manner.

12 SENATOR BATTIN: Thank you.

13 CHAIRMAN PERATA: Senator Cedillo.

14 SENATOR CEDILLO: Commissioner, the Pro Tem has
15 indicated this won't be a controversial appointment, so I will
16 make sure that that is not the case.

17 Let me say this to you. There are 22 million
18 motorists who take to our highways everyday, and because of
19 changes in our law 10 years ago, 10 percent are unlicensed,
20 untested, uninsured. That law served us well for 65 years.

21 You are here today not as a job review, but more
22 as a confirmation of your appointment to a leadership position.

23 My criteria for that is really a question not so
24 much of your capacity or your job performance, but really the
25 question of trust and integrity. And people have spoken to
26 that, and so I take their recommendations. It bodes well for
27 you that you have support from candidates who competed for your
28 job, and that speaks well for you.

1 And I am very impressed to see Sheriff Prieto
2 here to speak for you on your behalf. We share the concerns of
3 everyone for the question of safety on our highways, and you and
4 I have spoken about that privately.

5 So, I am here; I will support your nomination.
6 But I want to commit to you that I will continue to work with
7 you, with the Governor, on the resolution of the question of
8 safety for our highways and national security for our state and
9 our country.

10 And so we must find a resolution to the question
11 of immigrant motorists in our state and in our country. We
12 cannot wait. The status quo is unacceptable.

13 So, I just want to say to you that I look forward
14 to working with you consistently so that we can get this
15 resolved.

16 It served us well for 65 years. We are at a
17 different day and a different time, and I sit here before you,
18 with you, as you sit here before us, to say that we're prepared
19 to do all that we can bring the resources.

20 You have tremendous, tremendous support, and that
21 bodes well for your long career, but we must resolve this
22 problem. The status quo is unacceptable.

23 So, I look forward to working with you to get
24 this job done.

25 MR. BROWN: Senator, thank you for that.

26 Let me just say that I will commit to you now
27 that I will work with you on this issue as well as with the
28 administration.

1 CHAIRMAN PERATA: Thank you.

2 I have a couple of questions. I actually would
3 like them to be part of an ongoing discussion with your office
4 and with you. They really deal with the issue of our highways
5 and what's happening.

6 As the Senator pointed out earlier, we're not
7 building highways. And from the look of things, we won't be
8 building them again this year.

9 However, I don't know what the relationship is
10 between your office and Caltrans on a planning level as opposed
11 to just a functional level, but it would appear to me that on
12 the issue of congestion, a great amount could be learned by
13 greater cooperation.

14 And so, I at some point would enjoy having your
15 thoughts on that. I don't think this forum today is necessarily
16 the correct one.

17 The second thing is, we've had a huge rise in
18 congestion around the ports of California. And Long Beach is a
19 mess; Oakland is in my district, and we've heard quite a bit
20 about that over the time.

21 I'd like you to have to have your Department's
22 thoughts on things we might do with regard to that. I do know
23 that in my area, tractor trailers are one of the major causes of
24 accidents, although not necessarily the drivers of tractor
25 trailers, but other people negotiating too quickly in the front.
26 It takes a little longer to stop one of those.

27 Some people have talked about things that would
28 be futuristic, like dedicated truck lanes. But having lived in

1 the future for quite a while, it's probably a time for
2 revisiting those.

3 I just believe that the experience or the mission
4 of the Highway Patrol should be brought to bear and given high
5 credibility in these areas.

6 And then a related question would be, we're going
7 to once again see the issue of triples coming our way. I know
8 what the position has been previously, and I don't know whether
9 or not there'll be any change in that, but would look forward to
10 your discussion of that.

11 Then there's one right now just in terms of
12 Homeland Security. How big of a responsibility or role falls to
13 the Department, and are we -- I don't want to say are you
14 adequately funded because I'm not that stupid -- but I would
15 like to just have a brief dissertation on what you do and how's
16 it going?

17 MR. BROWN: I'll be happy to, Mr. Chairman.

18 First of all, as to the issue of traffic
19 congestion and mitigation, I've had a little bit of experience
20 in this in the Los Angeles area because we came to that
21 conclusion years ago and worked very closely with Caltrans, not
22 only from the standpoint of operations, but in also planning.
23 And we also engaged with the MTA, and a lot of other players
24 down there, including the SCAG, the Southern California
25 Association of Governments.

26 And in fact, we looked at a lot of proposals
27 dealing with not only the port traffic, and the Long Beach
28 freeway traffic, and the migration of trucks all throughout the

1 Southern California area, but also looking at it from the
2 standpoint of how we get the maximum amount of cars in a given
3 area in a given period of time.

4 Several years ago the Department received in the
5 budget some congestion relief officers. And they were designed
6 to be used as a pilot model, or pilot study, to see what we
7 could do in terms of getting through-put on some of our
8 roadways. In Los Angeles County we received 15 of them. We put
9 those 15 officers during the morning commute and the afternoon
10 commute on an 11-mile stretch of roadway on U.S. 101 in the San
11 Fernando Valley, an identified choke point as identified by
12 Caltrans.

13 We realized in that short period of time of about
14 60 days a 25 percent reduction in the number of crashes, and
15 over 22,000 additional vehicles were going through on a daily
16 basis. And our theory for that, quite frankly, is people will
17 obey the law when they see a black-and-white hanging around.
18 They don't try to put a 20-foot car inside of a 15-foot space.
19 They don't try to squeeze in and, frankly, not play well with
20 others on the roadway. And also, if there's something going on,
21 we can intercede, interdict, and move it on before we have a
22 situation.

23 Our goal is not to write tickets. Our goal is to
24 get voluntary compliance with the California Vehicle Code, and
25 people to behave themselves on the roadways so they can get from
26 Point A to Point B.

27 That particular study demonstrated to me
28 personally that it can be done. In fact, those numbers were in

1 fact placed before the Legislature the following year when we
2 came back with additional congestional relief officers.

3 I think there is a method. We are not the sole
4 rescuer for traffic congestion in California, but yes, we do
5 have a role. And I'd be happy to discuss with you and your
6 staff, whether it's Transportation or the Housing and
7 Transportation Committee staff, any of those issues at your
8 convenience.

9 The second issue that you wanted to talk about,
10 if I remember correctly, was the issue of how we deal with
11 Homeland Security. The Department has been involved in Homeland
12 Security, as has every law enforcement agency in California in
13 one form or fashion. We patrol many of the areas which are
14 considered high target areas, or areas of interest, or whatever
15 the case may be, or surrounding those. And we brief our people;
16 we train our people in areas that we have not trained them or
17 briefed them before.

18 We participate in a number of different programs
19 regarding the Joint Terrorism Task Force, and the terrorist
20 early warning groups that have been established by federal and
21 local authorities. We'll continue to do.

22 We discuss weekly, and in some cases daily, with
23 issues with the Office of Homeland Security here in California.

24 So, we are engaged in that battle. We do not do
25 it -- we do not do it, like I said, as a regular programmatic
26 response except for our participation in the Statewide Warning
27 Center, but we are prepared to ramp up any time we see that
28 there is a particular issue. For example, what we did last year

1 -- last week, excuse me, with the alleged scare involving the
2 Massachusetts area. We were up and operational in three of our
3 divisions; unlimited Emergency Resource Center operation. We
4 had deployed assets and equipment just in case something were to
5 happen in the Southern California area, and we will continue to
6 do so.

7 As far as staffing, and needs, and things of that
8 nature, we are currently in a review process of that program as
9 well, to whether or not we have the requisite amount of
10 resources to carry out what our mission is. And first of all is
11 to define that mission even more clearly with the Office of
12 Homeland Security and the other players.

13 We'll be happy to prepare that information for
14 you and get you that feedback at a later date once it becomes
15 even more clear than it is right now.

16 CHAIRMAN PERATA: Thank you.

17 Before we pass judgment, do you have any family
18 here?

19 MR. BROWN: No, sir, I do not. My daughter's in
20 college, and she's going to school today, and she said she
21 couldn't make it. My other one's in high school.

22 CHAIRMAN PERATA: That's great.

23 Unless you have any closing comments --

24 MR. BROWN: Mr. Chairman, if I may, as I
25 mentioned before, I am humbled, and probably one of the most
26 difficult things that I've had to enjoy since I've been on the
27 Patrol is to sit here and listen to people talk about me.

28 I am indeed very, very humbled. I come before

1 you as trying to be a good public servant and, hopefully, a good
2 steward for the CHP.

3 CHAIRMAN PERATA: Thank you.

4 SENATOR BATTIN: Move to recommend confirmation.

5 CHAIRMAN PERATA: We have a motion to recommend
6 confirmation.

7 Call the roll, please.

8 SECRETARY WEBB: Senator Ashburn.

9 SENATOR ASHBURN: Aye.

10 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

11 SENATOR BOWEN: Aye.

12 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

13 SENATOR CEDILLO: Aye.

14 SECRETARY WEBB: Cedillo Aye. Senator Battin.

15 SENATOR BATTIN: Aye.

16 SECRETARY WEBB: Battin Aye. Senator Perata.

17 CHAIRMAN PERATA: Aye.

18 SECRETARY WEBB: Perata Aye. Five to zero.

19 CHAIRMAN PERATA: Congratulations, Commissioner.

20 MR. BROWN: Thank you very much.

21 CHAIRMAN PERATA: Those of you who are here for
22 the Commissioner, if you'd like to stay around and enjoy the
23 festivities you're more than welcome. If not, we'll give a
24 moment so we can clear the room.

25 Patrick Henning is our next appointee. Patrick,
26 come forward.

27 I have this cliché that says you don't need any
28 introduction.

1 MR. HENNING: Mr. Chairman, Members of the
2 Committee, Patrick Henning, Employment Development Department.

3 I appear before you today with 34 years of
4 experience in labor law and labor relations issues, the last 17
5 years as the Chief Consultant to the policy committees in this
6 area of jurisdiction, first in the Assembly and then in this
7 great State Senate.

8 I am honored to have a reputation of a person who
9 has approached issues in a fair and even-handed manner. I am
10 known for my candor. I've been known to respect people in their
11 diverse views and also known for my integrity. This is my badge
12 of honor.

13 So, I approach the position, I'm honored to be
14 appointed by the Governor as head of the Employment Development
15 Department.

16 The President Pro Tem had asked me to put down
17 the goals of the Department that I would implement if confirmed
18 by this State Senate. In essence, I plan to aggressively
19 exhibit the programs and services of EDD to all of the
20 employers, the labor organizations, community organizations of
21 our state because EDD impacts on the economic vitality of our
22 great state, from the collection of payroll taxes, to our
23 Workforce Development Program, to our Job Services Program,
24 trying to match job seekers with employers and upgrading their
25 skills, to our Unemployment Insurance Program, to our Disability
26 Insurance Program. These are important elements of our great
27 state.

28 In that regard, too, one of my key priorities

1 will be to crack down on the underground economy of this state,
2 those individuals or organizations that pay no taxes at all. It
3 is unfair competition to law abiding employers, and it cheats
4 employees. That is a key priority in that regard.

5 Also, if I can, there have been some serious
6 discussions about the insolvency of the Unemployment Insurance
7 Fund of this state. Our projections had been of a greater
8 deficit. However, given the improving state of the economy, the
9 crisis will not totally evidence itself until next year.

10 The Fund, our estimate's that the Fund will be on
11 the plus side at the end of this calendar year, some \$130
12 million. We had just completed 2004; we were over 300 million.
13 So, we go from 300 million to about 130 million. Then in the
14 year 2006, we expect some problems.

15 It is, in essence, a structural problem of the
16 taxation. And if I can, the tax was established over 20 years
17 ago. During that period, we've had changes in our economy.
18 We've had benefit increases during that time, two of them, and
19 we have had an increase in the minimum wage itself.

20 So, I've been part of a process with the
21 Secretary of Labor and Workforce Development, getting together
22 the various partners who are trying to establish a common sense,
23 agreed upon structural reform.

24 If I can, another key priority is to increase the
25 stream of federal dollars as they come into the state,
26 especially, of course, in our Job Service Program, which
27 experienced a 28 percent cut in federal funds during the last
28 few years, and the Workforce Investment Funds that come into our

1 state from a high of about \$700,000 [sic] several years ago, a
2 few years ago, and now we're down to some \$400 million. So,
3 there have been cuts in those areas.

4 Another key goal is to increase the skills and
5 capacity of the professional employees at EDD, all 10,000 of
6 them. I believe in a total diversified workforce that has great
7 outreach to various communities. And, like other state
8 agencies, we estimate in the next five to seven years, over 30
9 percent of our employees will be at retirement age.

10 So, it's time to plan for that. It's time to
11 train people more, to get them upgraded skills and give them a
12 career ladder in EDD.

13 Also, Mr. Chairman, we have in EDD a complex
14 series of technical enhancements that need to be done in the
15 area of the informational technology. Our computer systems, we
16 have over 4,000 programs established in the 1980s. So, we've
17 dedicated about \$98 million for that upgrade, because, if I can,
18 our Department is a key tax collector of the state, all that
19 private information on over one million employers.

20 We also have all the information of every
21 applicant who applies for Unemployment Insurance or Disability
22 Insurance, all the info with regard to job training.

23 So, all of these elements make our Department a
24 great possessor of private information. So part of our energy
25 to upgrade these computer systems is to protect the privacy of
26 employers, of employees, and protect the whole security
27 structure of the Department.

28 So in closing, the talents and energy I brought

1 to all of you here I give with complete energy and dedication as
2 Director of the Employment Development Department.

3 I would be so honored to be confirmed by this
4 great body. Thank you very much.

5 CHAIRMAN PERATA: Thank you, Mr. Henning.

6 In keeping with our long standing tradition of
7 the last week and few hours, we're going to ask those who would
8 like to speak briefly in support of the nominee to come forward.

9 Senator McClintock.

10 SENATOR MCCLINTOCK: Thank you.

11 Mr. Chairman and Members, I am very honored to be
12 here today to support the nomination of Pat Henning.

13 Those of you who know me and know Pat may
14 suspect, rightly, that we have very profound differences of
15 opinion on matters of public policy. Public policy, of course,
16 is the Governor's prerogative in naming his appointees.

17 The Senate's prerogative and responsibility is to
18 examine the integrity, the character, and the qualifications of
19 those appointees. And I have absolutely no hesitation at all in
20 saying that in 20 years now that I have worked with Pat Henning
21 -- we go back to the State Assembly when I served as Vice
22 Chairman of the Labor Committee and Pat was Committee Consultant
23 there -- I have known him consistently to have the highest
24 integrity and the highest character of any of the consultants
25 that I have worked with of either party.

26 I have never seen him shade an opinion or to
27 allow an opinion to be introduced into a committee analysis.
28 I'm sure that from time to time he's been under enormous

1 pressure to do so. The fact that he's resisted that pressure, I
2 think, speaks very, very highly of his character.

3 He is exactly the kind of individual that has
4 devoted his life to the public service of the people of
5 California. His qualifications, I think, are unchallenged.
6 They are impeccable.

7 Decades of work in this field make him, in my
8 judgment, an ideal appointee to the Director's post at EDD.

9 CHAIRMAN PERATA: Thank you, Senator.

10 MR. HENNING: I am humbled by his comments, a
11 great person of integrity and principle in this great State
12 Legislature. I makes no excuses about it, he's a good friend.

13 MR. LANDINGHAM: Good afternoon. I'm Ron
14 Landingham. I'm Vice President of Bargaining for SEIU Local
15 1000. We represent 89,000 state workers, 8,000 of whom work for
16 the EDD.

17 And we recently met with Mr. Henning and were
18 strongly encouraged by his leadership. We believe that he
19 possesses the right background and skills to lead EDD in the
20 right direction, and we're looking forward to a successful
21 working partnership.

22 We believe that he has, throughout his career,
23 he's focused on solutions that are balanced and fair, and so
24 Local 1000 strongly supports the confirmation of Patrick
25 Henning.

26 Thank you.

27 CHAIRMAN PERATA: Thank you, sir.

28 Mr. Balgenorth.

1 MR. BALGENORTH: Bob Balgenorth, President of
2 the State Building Trades.

3 Patrick Henning, I've known Patrick Henning for
4 17 years. I was very surprised when the Governor reached out,
5 said that he was going to do nonpartisan appointments and look
6 for best person to do the job. That's exactly what he got here,
7 the best person to do the job.

8 The integrity of Pat Henning over the years has
9 been impeccable. He's got experience that very few other people
10 have, from Labor Commissioner, Agricultural Labor Relations
11 Board, to 17 years representing the Legislature on labor
12 issues.

13 I can't think of a better person and a better
14 friend.

15 Thank you.

16 CHAIRMAN PERATA: Thank you, sir.

17 MS. SUFFIN: Hello. My name is Adrienne Suffin.
18 I work for the Employment Development Department as a
19 determination interviewer. I Chair SEIU Local 1000's EDD
20 Committee.

21 Like Ron said, SEIU Local 1000 represents about
22 8,000 employees who work for the Employment Development
23 Department. We're all very excited about working with Patrick
24 Henning as the new Director of our Department.

25 I believe that Mr. Henning's first official act
26 on his new job was to meet with Local 1000 members and discuss
27 Department issues. He respects the hard work that we do in the
28 Department, he is willing to work with us. In fact, Patrick

1 Henning and the people who work for the Employment Development
2 Department believe that good labor relations is the key to
3 solving problems at the workplace, not just for EDD employees,
4 but for the unemployed, the disabled, and the employer community
5 in the State of California. We only wish that other department
6 directors shared this progressive attitude.

7 So, on behalf of the people who work for the
8 Employment Development Department, and the millions of people in
9 the State of California that we service, please support the
10 nomination of Patrick Henning for the Director of the Employment
11 Development Department.

12 CHAIRMAN PERATA: Thank you.

13 MS. SANCHEZ: Good afternoon. Liberty Sanchez,
14 Law Offices of Barry Broad, representing Teamsters, Amalgamated
15 Transit Union, Unite Here, UFCW, Machinists, ESC, IFPTE Local
16 21. I think that's it.

17 I cannot think of a better candidate for the
18 position of Director of Employment Development Department, based
19 on his years of experience, his knowledge base, his integrity,
20 his level of conscientiousness, his professionalism, his ability
21 to bring parties together to the table to have real
22 conversations about how best to work out important legislation,
23 has prepared him for this enormous task before him.

24 I speak also from a personal perspective, because
25 at the end of my five-year stint as a legislative staffer, I
26 spent the last year under his direction and tutelage. And I
27 will personally be forever and eternally grateful for the
28 knowledge that he shared with me. And I know I speak also for

1 myriad other staff people for whom his door was always open,
2 both young staff people looking for guidance, and older staff
3 people who'd been around for awhile looking for constructive
4 suggestions about how to effectuate what they wanted to
5 effectuate.

6 And finally, I think the most impressive thing
7 that I think everybody says when they're talking about Pat is
8 the fact that he's so balanced in his approach and his ability
9 to listen to all sides. Under his stewardship, Senator Alarcon
10 authored SB 40, which was the most recent unemployment insurance
11 benefit increase.

12 Something that was very impressive about Pat was
13 not only his ability to handle that task, but also to field the,
14 you know, thousands of phone calls from confused citizens who
15 wanted to know how the UI benefit increase affected them with
16 diplomacy and aplomb.

17 So, it is at the greatest level of support that
18 the unions I represent support the confirmation of Mr. Henning.

19 Thank you.

20 CHAIRMAN PERATA: Did he teach you all those
21 words, aplomb and tutelage.

22 [Laughter.]

23 MS. SANCHEZ: He did.

24 MR. PERRY: Mr. Chairman and Members, I'm Randy
25 Perry on behalf of Aaron Read and Associates with the California
26 Association of Highway Patrol, and PORAC, and our CDF
27 Firefighters, numerous other organizations, both rank and file
28 labor, but employers as well, who support Pat's confirmation.

1 I think the most important thing -- I won't
2 repeat anyone else says -- is he has good jokes. And we always
3 appreciate those jokes and want to keep them coming, and they
4 are coming still.

5 Thank you.

6 CHAIRMAN PERATA: Thank you.

7 MR. PULASKI: Mr. Chairman and Members, Art
8 Pulaski, California Labor Federation.

9 I just want to acknowledge there's a long line
10 here, and just to add the support from our Federation on behalf
11 of the person who I believe is the best appointment this
12 Governor has made thus far, 17 long years here serving in the
13 Capitol.

14 CHAIRMAN PERATA: You might not want to drive the
15 highways on your way out.

16 [Laughter.]

17 MR. PULASKI: And also the Agricultural Labor
18 Relations Board before that. He's a man of great experience and
19 great integrity.

20 We vigorously support him, and thank you.

21 CHAIRMAN PERATA: Thank you, sir.

22 Anybody who just wants to stipulate to the
23 previous would be just fine.

24 MR. CONATY: Pete Conaty, representing both
25 myself and my clients, the Pacific Association of Building
26 Service Contractors, which is a business trade association which
27 is heavily impacted by the underground economy.

28 The underground economy costs the State of

1 California billions of dollars, that's with a "b", every year.
2 We could go a long way towards solving our state budget problems
3 if we could just concentrate on getting rid of the underground
4 economy.

5 I have worked with Pat for 15 years. He has been
6 extremely fair and helpful to our business trade association in
7 trying to get a handle and reduce the underground economy.

8 We are glad that the Governor has taken this as
9 an issue he will deal with. I am sure that was at Pat's urging.

10 So, from a business perspective, we are 100
11 percent in support of this nomination. Thank you very much.

12 CHAIRMAN PERATA: Thank you.

13 MS. BALMORE: Mr. Chair and Members of the
14 Committee, I am Christie Balmore representing the California
15 Professional Firefighters, and I will be brief.

16 Mr. Henning has been a friend of my organization
17 for 30 years. We have worked with him, witnessed his tremendous
18 amount of integrity and his even-handedness as he deals with all
19 parties in all aspects of labor and employment.

20 And we ask you to affirm his confirmation.

21 CHAIRMAN PERATA: Thank you.

22 MR. DAVENPORT: Allen Davenport with the Service
23 Employees International Union on behalf of our 590,000 other
24 members.

25 I've known and worked with Pat Henning in a
26 variety of capacities for 22 years, and I want to join those to
27 commend to you a man you know well.

28 Thanks very much.

1 CHAIRMAN PERATA: Thank you.

2 MR. CREMINS: Tim Cremins, Operating Engineers.

3 It's an honor for us to endorse Pat Henning
4 today. I've not only known Pat all my life, but he's a member
5 of our union. And the unique thing about Pat, when he worked
6 for our union, he not only represented the workers well, but
7 understood the needs of the private sector employees and the
8 contractors, and was very even-handed.

9 Again, it's an honor. Thank you.

10 CHAIRMAN PERATA: Thank you.

11 MR. ANDERSON: Mr. Chairman and Members, Mike
12 Anderson with United Transportation Union.

13 For all the above reasons we support the
14 confirmation.

15 CHAIRMAN PERATA: Wonderful, thank you. You set
16 the bar pretty high.

17 MR. MEJIA: Mr. Chair and Members, Jose Mejia
18 with the California State Council of Laborers.

19 It's certainly our pleasure and honor to support
20 the confirmation of Mr. Henning. He's completely dedicated to
21 public service. His commitment is well beyond what's required.

22 I strongly urge your confirmation. Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MR. ASSAGAI: Mr. Chairman and Members, Mel
25 Assagai for the Advocacy Group and the National Association of
26 Women Business Owners, and the California Association of Urban
27 League Executives.

28 We think that this nominee is one of the best the

1 Governor has made. For the 20 years that I've known him, he's
2 been a man of highest integrity. And the Women Business Owners
3 are particularly proud to support him because of the
4 even-handedness with which he operates -- operated in the
5 Legislature and we think will operate at the Department of
6 Employment Development.

7 So, congratulations, and thank you very much.

8 CHAIRMAN PERATA: Thank you.

9 MR. BROWN: Mr. Chair, Members of the Committee,
10 Louie Brown on behalf of the Nisei Farmers League, the
11 California Grape and Tree Fruit League, and California Citrus
12 Mutual.

13 Mr. Henning has always treated our industry with
14 the utmost respect. While we don't always agree, we do always
15 see things in a professional manner. He's always been fair and
16 honest to us.

17 We support his confirmation. Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MR. SANDAHL: Mr. Chairman, Lee Sandahl, a
20 member of and speaking for the International Longshore and
21 Warehouse Union.

22 You've got the right man for the job here.

23 CHAIRMAN PERATA: Thank you.

24 MR. LOW: Mr. Chairman and Members, Dave Low,
25 California School Employees Association.

26 We stipulate to all the past previous comments.

27 CHAIRMAN PERATA: Thank you.

28 MR. FRIES: Tim Fries on behalf of CAUSE

1 Statewide Law Enforcement Association.

2 We'd like to echo everyone's comments as well.

3 CHAIRMAN PERATA: Thank you.

4 MR. DOCHERTY: Thank you Mr. Chair and Members.
5 Bryce Docherty on behalf of the California Medical Association.

6 We've come to know Pat very well over the last
7 couple of years as we've tried to strike an important balance
8 between the relief business needs and Workers' Compensation, and
9 getting injured workers the appropriate access to medical care
10 they deserve.

11 We wholeheartedly support his confirmation.
12 Thank you.

13 CHAIRMAN PERATA: Thank you.

14 MS. BROYLES: Good afternoon, Mr. Chairman and
15 Members. Julieanne Broyles, California Chamber of Commerce, here
16 in support of Patrick Henning.

17 I think the redness of his ears is going to
18 continue to grow because of all of the compliments that he's
19 received today from both sides of every issue that I seem to
20 have worked with him on. Even-handedness, fair, unimpeachable
21 sense of integrity, and we couldn't be more pleased to have him
22 as Director of EDD.

23 CHAIRMAN PERATA: Thank you.

24 MR. CURTIN: Mr. Chairman and Members, Danny
25 Curtin, California Conference of Carpenters.

26 I do want to stipulate to all the previous
27 comments. But I would like to add that in this case, I think
28 they're all true.

1 I've known Patrick 30-something years.
2 Everything you've heard is absolutely true. He is the spirit of
3 bipartisan politics.

4 I can simply add one thing. If Patrick can't
5 find a way to solve the problem, it's probably not solvable at
6 that time. So, I think they've done the right thing here and
7 made a great, great choice.

8 Thank you.

9 CHAIRMAN PERATA: Thank you.

10 MR. McFETRIDGE: Mr. Chairman and Members,
11 Duncan McFetridge, representing the Coalition of Utility
12 Employees in the Elevators Construction Union, here in strong,
13 strong support for Mr. Henning.

14 Given his experience and his knowledge, we're in
15 strong support of his confirmation.

16 CHAIRMAN PERATA: Thank you.

17 MR. WETCH: Mr. Chair and Members, Scott Wetch
18 on behalf of the California State Pipe Trades Council, and the
19 State Association of Electrical Workers, and the Western States
20 Council of Sheetmetal Workers.

21 I would like to, for the very first time in my
22 career, associate myself with the Chamber of Commerce's comments
23 in support of this nominee.

24 [Laughter.]

25 CHAIRMAN PERATA: Thank you.

26 MS. KAHN: Good afternoon. Jamie Kahn here on
27 behalf of the Associated General Contractors.

28 We're very happy to be here to support Pat

1 Henning's appointment to EDD as their Director.

2 We've worked Pat for a number of years as a
3 consultant to the Labor Committee and have always found him to
4 be fair and balanced in his assessments and his analyses, and
5 he's always able to see through things and listen to us, and
6 we've always appreciated that.

7 So, we would really wholeheartedly support his
8 nomination and support his confirmation. Thank you.

9 CHAIRMAN PERATA: Thank you.

10 MR. ABRAMS: Good afternoon, Mr. Chairman,
11 Members of the Committee. I'm Jim Abrams with the California
12 Hotel and Lodging Association.

13 I have both personally and institutionally on a
14 professional level with Mr. Henning been involved with him, both
15 when he was the Labor Commissioner, throughout his tenure here
16 in the Legislature.

17 And I think perhaps most importantly from the
18 standpoint of many of us in the employer community, and
19 particularly representing the people who actually work in
20 businesses is, how do we go about providing extra benefits and
21 opportunities for them to move up and to engage in the economic
22 welfare and growth of this state. And I think Mr. Henning has
23 always shown that that's been one of his key passions, and I
24 think as the head of the Employment Development Department. That
25 he will have a unique opportunity to provide that kind of
26 continued opportunity for employees.

27 We wholeheartedly support his nomination as the
28 Director of the Employment Development Department.

1 CHAIRMAN PERATA: Thank you.

2 Anyone here to speak in opposition? Seeing none,
3 do you want to just take the money and run, or do you want to
4 say something?

5 MR. HENNING: I'll take the money and run, if I
6 could.

7 CHAIRMAN PERATA: Senator Cedillo.

8 SENATOR CEDILLO: Staff pointed out that the
9 unfortunate part of today for Mr. Henning is not so much the
10 appointment but that he's alive to hear all this praise.
11 Normally you don't hear that unless you're laying down in a box.

12 [Laughter.]

13 SENATOR CEDILLO: I would move the
14 recommendation.

15 CHAIRMAN PERATA: Senator Battin.

16 SENATOR BATTIN: Thank you, Mr. Chairman.

17 I have actually several questions. Mr. Henning,
18 first off, I enjoyed our meeting when you came into my office.

19 MR. HENNING: Good, yes, sir.

20 SENATOR BATTIN: Certainly I believe everybody is
21 uniform in their high praise of you personally.

22 I do have some questions, though, that I'd like
23 to work through.

24 In the Legislature, in the last five years at
25 least, six years, it's been the scene of some very anti-business
26 legislation of which you were the Staff Director in the
27 Committee on Labor in the Senate. The bills included:
28 Prohibiting flex time to allow working families flexibility in

1 their work hours, increase unemployment insurance taxes on
2 businesses, raising the minimum wage which hurt small business
3 owners, increasing penalties against certain businesses for
4 violations, further regulating certain businesses even such as
5 car washes, and bills requiring binding arbitration on our
6 farmers.

7 I know in your analyses, as I've reviewed them,
8 you would generally write, "The proponents say this," "opponents
9 say that."

10 But I want to know how you feel. How do you
11 personally feel on those issues?

12 MR. HENNING: Senator, it goes without any major
13 statement at all that the issues that came before the Assembly
14 Labor and Employment Committee and the Senate Labor and
15 Industrial Relations Committee were issues where the parties
16 were polarized, in all honesty, probably greater than any other
17 Committee in this Legislature.

18 To be honest, my job was to be Staff Director or
19 consultant to the committee, to analyze legislation brought by
20 people like yourself and others in a fair and even-handed
21 approach.

22 Indeed, to be honest with you, the challenge
23 comes up whether an issue or condition that employees are under,
24 or employers are under, is to reach a sufficient level to have a
25 statute put in, you know, to have a statute as opposed to having
26 industry exercise their obligations without any covering
27 statute.

28 You could have a law to increase the minimum

1 wage, not to make light of that issue at all, to \$20 per hour.
2 Would that impact industry in this state? You betcha.

3 Certainly, any issue that comes in can impact
4 upon industry or employees. I mean, there are -- my honest
5 answer to your general question is, one, that was not my job.
6 In all honesty, looking back on my career here, I don't believe
7 it is a committee consultant's job to put his views or her views
8 in ink like that. That's up to people who got elected to
9 office.

10 But every partner that came in support and
11 opposition knew almost all the time where I stood on it if
12 asked. I'd tell them. I'm known for my candor.

13 So, you approach me with a question which, I've
14 got my own personal views on some of the economic issues of the
15 day, but that was never my job to impose that on you, or your
16 staff, or anybody else, sir, with due respect.

17 SENATOR BATTIN: I certainly agree with you on
18 that, actually. I didn't say that you did. As a matter of
19 fact, that was one of the first things --

20 MR. HENNING: Oh, I'm sorry.

21 SENATOR BATTIN: -- that was one of the first
22 things that we looked for.

23 There are other staffers in this building that do
24 exactly what you said you do not think is correct; they do
25 impose their personal view. As a matter of fact, the Republican
26 Caucus in our analyses, we request that from our staff. That's
27 not what I was asking you.

28 I was asking you to effectively, you're now up to

1 be the Director, and so I'm asking you what your positions are
2 on those bills.

3 MR. HENNING: On those bills or on the activities
4 of Director of the Employment Development Department, sir?

5 SENATOR BATTIN: On those bills.

6 MR. HENNING: I understand where you're coming
7 from.

8 I think yesterday when we got together, I was
9 trying to be as honest as I could about views. Let's take the
10 issue of unemployment insurance benefits.

11 When the bills by Senator Alarcon and others were
12 introduced, I called for meetings between industry and organized
13 labor if we could come to common resolve on the issue.
14 Certainly an issue like the reserve, the solvency of the
15 Unemployment Insurance Fund, things were different at those
16 times, projections were different.

17 I openly shared my concerns about the solvency of
18 the Unemployment Insurance Fund: money or contributions, taxes
19 coming in, payments going out. I expressed those concerns at
20 all times.

21 We've had a structural crisis. There were
22 problems in the economy, things like that.

23 CHAIRMAN PERATA: Senator, let me just interrupt
24 you for a second.

25 This gentleman has been nominated by the
26 Governor. I think his feelings on those issues are germane to
27 his previous capacity.

28 I understand the thrust of the question, but I

1 believe generally speaking, the Governor's entitled to a person
2 that he believes best can run that department. I think the
3 testimony on his behalf has been bipartisan.

4 So, I would like to ask you to just move on. We
5 can stipulate that he probably has views different than yours
6 just by the nature of the people who came forward to speak for
7 him.

8 SENATOR BATTIN: Mr. Chairman, I appreciate that.
9 I believe that the Unemployment Insurance taxes on business is
10 absolutely germane to his running the EDD, which deals with
11 that.

12 Let me move to that, because it's the second
13 question, actually.

14 In response to the Committee's question that they
15 sent you, you responded back on the 14th of January. The
16 Committee asked about, it says:

17 "California's Unemployment
18 Insurance Fund is on the brink of
19 insolvency."

20 It goes on and discusses that, asks what you think about it.
21 One part of your answer, you say that it's important that we
22 design,

23 "... a revenue structure that enables
24 sufficient funds to be collected and
25 respond timely to varying economic
26 conditions."

27 That's vague to me. I'm trying to get some closure on that.

28 Does that mean that you're thinking that

1 increasing the UI taxes would fit that?

2 MR. HENNING: No, sir.

3 SENATOR BATTIN: So, you would not be ever
4 supporting an increase on the UI taxes?

5 MR. HENNING: On the issue -- well, I'll tell you
6 right now, if -- there is a combination of areas to bring
7 structure. There's one, the taxation, the taxable base of
8 earnings. Two is the tax base themselves. Three is
9 eligibility. And four is the benefit payments.

10 I am not here to advocate for any tax increase,
11 nor have I advocated a tax increase with any of the parties.

12 It is a complete structural change. We have
13 certain employers in the state who pay more in tax than other
14 employers. We have to glance at industries.

15 But in all honesty, it's cash in, cash out. I'm
16 against paying any benefits at all if we don't have sufficient
17 reserves to take care of us in tough times.

18 And the questions at hand will be by others --
19 the employers, the labor organizations, et cetera -- is, should
20 there be some different approach to the tax program, or should
21 we tighten up eligibility? Should we take people off of
22 unemployment who ought to not receive it because of their
23 employment? So, those types of issues.

24 I'm going to be trying to bring the parties
25 together. There have been some talks which have been led by the
26 Secretary of Labor in the course development.

27 Am I advocating taxes to increase the solvency
28 issue? No, I'm not doing that at all.

1 SENATOR BATTIN: Fair enough.

2 MR. HENNING: But these questions are complex,
3 you know. Economic challenges, you know. We should take some
4 time to get into it.

5 I don't mean to give you long answers here, sir.
6 But am I advocating? No.

7 SENATOR BATTIN: I'm fine with your answers.

8 MR. HENNING: You are fine with me? That's good.
9 I mean that.

10 Most of the other Members know my sense of humor.

11 SENATOR BATTIN: You worked for seven years for
12 the Hotel Employees and Restaurant Employees.

13 MR. HENNING: I was a member of the union, a
14 proud member of organized labor, and yes, sir. I think it's
15 about seven years, where I was head of contracts for the Los
16 Angeles area.

17 SENATOR BATTIN: As I told you, and I've been
18 very upfront with everybody, this concerns me. HERE, I believe,
19 has not just shown themselves as very proactive as a union, but
20 they're very over zealous in their belief to unionize private
21 establishments. From hotels and restaurants in San Francisco
22 and Los Angeles, to Indian casinos in my own district, I have
23 seen them use scare tactics, misinformation, intimidation to
24 promote their efforts to unionize.

25 In San Francisco, they virtually shut down hotels
26 for several weeks, forcing customers to stay elsewhere and
27 losing, all ready cash-strapped San Francisco, millions of
28 dollars.

1 In Los Angeles last fall, HERE called a boycott
2 for folks to avoid eating and sleeping in Los Angeles area
3 hotels. The city lost over a million dollars then.

4 In my own district, I have seen numerous examples
5 of HERE going over, crossing the line way beyond that I have
6 ever seen any other union organize anywhere in my entire life,
7 from going to people's homes, to screaming at the Chairman of
8 the Agua Caliente Tribe at his own place of business to try to
9 do intimidation. That concerns me.

10 Do you believe that, whether it's an Indian
11 casino, or a Los Angeles or San Francisco hotel, that people
12 have as much right not to be a member of a union as to be a
13 member of an union?

14 MR. HENNING: Any employee is entitled to join a
15 union or choose not to join a union.

16 If I can, you also heard here the testimony of a
17 person endorsing me from the California Hotel Association, knows
18 of my experience in this area.

19 I do not choose to speak for the average hotel
20 employee who's a member of the Hotel and Restaurant Employees
21 Union, who has authorized officers or organizers to exercise
22 their freedom of speech.

23 As I indicated to you the other day, my idea is
24 to organize, at the time, to organize employees into a cohesive
25 element so they can get to agreed-upon collective bargaining at
26 the table. Get to the table where you come to a contract, in
27 general terms.

28 We talked exactly the other day in more specific

1 terms. If you bring hostility to the area, you ain't going to
2 get a contract. Parties aren't going to get together.

3 Now of course, you bring up the accusations and
4 the elements of that. I don't know all.

5 But if you're in search of a labor agreement with
6 an employer, and any organization gets hostile, you aren't going
7 to get that agreement. And it aggravates what's going on.
8 That's my principle on that. Hostility has no place at all in
9 the labor arena.

10 SENATOR BATTIN: Thank you.

11 CHAIRMAN PERATA: Any further questions by
12 Members.

13 SENATOR ASHBURN: I do, Mr. Chairman.

14 Mr. Henning, with respect to the qualities that
15 you possess that have caused you to have the positions that you
16 have performed in the past, and those which you would undertake
17 in this appointment by the Governor, what are the differences?

18 MR. HENNING: Differences?

19 SENATOR ASHBURN: What are the differences in the
20 skills that you personally possess in the application of those
21 skills to the positions that you've held in the past and the
22 position that you, I would say, are likely to undertake now?

23 MR. HENNING: I'd say it's a chance for me to get
24 out. It's a chance for me to lead a state department which is
25 one of the largest in state government itself. We have over
26 10,000 employees with a budget of \$11.5 billion.

27 It gives me a chance to get out and talk to the
28 employers, large and small, about the programs of our state and

1 energize people.

2 We spoke the other day about job training. We
3 have only a small piece of that. And our effort is to get the
4 programs to address the needs of industries in the state,
5 because, as I brought up to you, Senator, overall California
6 expends \$6 billion a year in job training and vocational
7 training funds, \$6 billion a year. Where is the accountability
8 for all that? Where are we going?

9 SENATOR ASHBURN: Where is the product?

10 MR. HENNING: You cannot train a person -- if
11 there's a job training program today for clerk typists, it ought
12 to be closed down.

13 So, it's taking those programs we have, matching
14 the needs of industry, and having that strict partnership
15 together.

16 It's that energy and a time to get out and stir
17 up our troops, help them out. Help them do the job they're
18 there to do. Interact our Department with industry and
19 community organizations. That's different.

20 I think it's a chance to get out and lead.

21 SENATOR ASHBURN: I think you're extraordinarily
22 well qualified. The experiences that you have had, and the
23 front-line responsibility that you have demonstrated is
24 extraordinary.

25 Regardless of differences of opinion that we
26 might have about philosophy, or differences of public policy,
27 what I would ask of you as one Member of this Committee, once
28 you're confirmed, is that lead like no other. Take advantage of

1 that skill and that ability that you have and be yourself.

2 MR. HENNING: Yes, sir.

3 SENATOR ASHBURN: Obviously, comporting to the
4 policy directives of the Governor.

5 MR. HENNING: Well, after our discussion the
6 other day, there was one State Senator who invited me to the
7 Mojave Economic Summit, and I've accepted. Went back to the
8 office and told the staff I've accepted an invite by a State
9 Senator to go to a Mojave Economic Summit, and they all said,
10 "What?" And I said, "I'm going," so I'll be there.

11 SENATOR ASHBURN: I just want to encourage you --

12 CHAIRMAN PERATA: I'm busy day.

13 [Laughter.]

14 MR. HENNING: Thank you very much, Senator.

15 CHAIRMAN PERATA: Thank you, Senator.

16 Senator Bowen.

17 SENATOR BOWEN: Thank you.

18 Would you, as you work on the privacy and
19 information technology questions, keep the Legislature in the
20 loop as to what you're doing?

21 MR. HENNING: Yes, I will, Senator.

22 SENATOR BOWEN: Thank you.

23 Two other quick questions. Isn't this job a step
24 down from being a Senate staff director.

25 [Laughter.]

26 SENATOR BOWEN: Fifth Amendment.

27 CHAIRMAN PERATA: Rhetorical.

28 MR. HENNING: I'm honored to be appointed by the

1 Governor. He's been very good, Governor Arnold Schwarzenegger.
2 A very good leader of the state.

3 SENATOR BOWEN: Wouldn't the Senate be smarter to
4 deny confirmation so that we could keep you here in the Senate?

5 [Laughter.]

6 MR. HENNING: Some people say if I get denied
7 confirmation, I have bumping rights back to my previous
8 position.

9 CHAIRMAN PERATA: He's standing in back.

10 SENATOR BOWEN: Thank you. That's all I have.

11 CHAIRMAN PERATA: Sir, would you like to briefly
12 close?

13 MR. HENNING: I bring that energy, that
14 integrity, before this Committee seeking confirmation.

15 There will be times when I will be approaching
16 all of you, asking for your help and guidance on the issues to
17 bring California very competitive in this global economy by
18 urging us to try to aid California's employers to be more
19 competitive, employees on the job to have higher skills in order
20 to do the job and build for the future itself.

21 With that, Mr. Chairman, I ask for your aye vote
22 for confirmation.

23 CHAIRMAN PERATA: We all ready have a motion.

24 Do you have any family here you'd like to
25 introduce?

26 MR. HENNING: My spouse is here, Gena Henning was
27 here an hour ago.

28 CHAIRMAN PERATA: She stayed.

1 MR. HENNING: And Patrick my son is holding up
2 the pillar over there.

3 CHAIRMAN PERATA: Nice job. Thank you.
4 Please call the roll.

5 SECRETARY WEBB: Senator Ashburn.

6 SENATOR ASHBURN: Aye.

7 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

8 SENATOR BOWEN: Aye.

9 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

10 SENATOR CEDILLO: Aye.

11 SECRETARY WEBB: Cedillo Aye. Senator Battin.
12 Senator Perata.

13 CHAIRMAN PERATA: Aye.

14 SECRETARY WEBB: Perata Aye. Four to zero.

15 CHAIRMAN PERATA: Director Henning, you are
16 confirmed. Congratulations.

17 We will take to brief break.

18 [Thereupon a brief recess
19 was taken.]

20 CHAIRMAN PERATA: The agenda is inaccurate. As a
21 matter of protocol, we will ask the Chair of the Board of Prison
22 Terms, Ms. Perez, is to come on up.

23 Welcome.

24 MS. PEREZ: Thank you, sir. Good afternoon,
25 Mr. Chairman and Members of the Senate Rules Committee.

26 Thank you for the opportunity to introduce
27 myself. I am humbled, and it is an honor to be here today.

28 My name is Margarita Perez, and I am the Chair of

1 the Board of Prison Terms.

2 When I accepted this appointment about one year
3 ago, I was working as a senior investigator within the
4 Investigations Division, and prior to that, I had worked for the
5 California Department of Corrections for approximately 12 years
6 in a variety of capacities. I previously have also been an
7 officer within the military.

8 Having worked at the Board, I knew that the Board
9 of Prison Terms had gone through many changes and improvements
10 during the past several years, yet clearly it was apparent that
11 there were still areas in which we needed improvement.

12 When I agreed to except this assignment, I did so
13 with one goal in mind. That goal was to make the Board of
14 Prison Terms a model for other states to emulate.

15 Under my leadership a number of positive changes
16 have taken place within the organization that have created
17 efficiencies and effectiveness in the areas of the revocation
18 system, Battered Woman Syndrome, quality control of deputy
19 commissioner decisions, supervisory oversight of field
20 personnel, and the establishment of the first ever Training and
21 Quality Control Units. The most prominent accomplishment is the
22 timely implementation of the Valdivia Remedial Plan.

23 In addition, we continue to intensively monitor
24 the revocation process, looking for ways to increase efficiency
25 and improve the overall revocation process. Under my
26 leadership, we have accomplished this massive and complex
27 overhaul in spite of the fact that we had a limited amount of
28 time and resources in which to develop policies and procedures

1 to carry out the requirements of the Valdivia Remedial Plan to
2 hire, train, and deploy staff to the field, to negotiate with
3 applicable bargaining units, and a myriad of other processes
4 associated with putting a complex process like this in place.

5 I am pleased to report that we have complied with
6 the Valdivia Remedial Plan in a timely fashion and anticipate
7 complying with the last segment of this plan, which is the
8 Probable Cause Hearing approximately three-and-a-half months
9 early.

10 I am very proud of our accomplishments in this
11 area, and I would suggest that under my leadership, this is
12 first of many significant and important changes to come at the
13 Board of Prison Terms.

14 Of course, that is not to say that we do not have
15 issues at the Board and everything is running perfectly. That
16 is not the case. One of our major concerns at this point is the
17 chronic lifer backlog. There are a number of factors that have
18 and contribute, and continue to contribute to this backlog that
19 I would be happy to address, as well as actions that we are
20 taking in order to address this very significant and important
21 issue.

22 As I said at the beginning, under my leadership
23 we have initiated many changes at the Board. Our mission is to
24 provide even-handed justice in making parole and parole
25 revocation decisions while we protect the due process rights of
26 inmates, and while considering the impact of such decisions on
27 the victims of crime and public safety.

28 In addition, we continue to encourage the use of

1 programs that address the underlying problems that contribute to
2 recidivism.

3 I believe that these are just the beginning steps
4 to reach our goal in making the Board of Prison Terms a model
5 parole authority. And I am confident that in time we will
6 achieve our goal.

7 Thank you for the opportunity to serve the people
8 of the state in this body, and at this time I'd be happy to
9 answer any questions.

10 CHAIRMAN PERATA: Senator Cedillo, do you have
11 any questions, or any other Senator?

12 SENATOR CEDILLO: I'll come back.

13 SENATOR BOWEN: I do have questions, thank you.

14 I have a number of questions. Some of them are
15 matters that you and I spoke about in my office, but because
16 they affect our budget deliberations, I'd very much like to hear
17 your views on them in this forum.

18 One of the things that you talked about in your
19 presentation was the backlog. I wanted to know what you think
20 is an acceptable backlog, and what it would take to get from
21 something over a backlog of a thousand or so. It doesn't matter
22 whether it's 1300 or 1400, it's still a big backlog.

23 What would it take to get that to a level that
24 you deem acceptable.

25 MS. PEREZ: Before I address that specific
26 question, what I'd like to do for the Senate Rules Committee is
27 kind of give you a little bit of a background so that you can
28 understand why we have this backlog within the Board of Prison

1 Terms.

2 In 2000 or 2001, Senate Bill 778 was passed that
3 enabled the Board of Prison Terms to conduct hearings with one
4 commissioner as opposed to two. That gave the Board of Prison
5 Terms the ability to conduct twice as many panels.

6 However, the unfortunate -- an unfortunate factor
7 of that is, even though we had the ability to conduct twice as
8 many panels, the resources available for the Board of Prison
9 Terms, and specifically the Department of Corrections, remains
10 statistic. So, we ended up with a situation -- the situation we
11 ended up in is that the resources within the Department of
12 Corrections do not have the ability to catch up with all of the
13 hearings that are currently due.

14 In addition, it's very significant to note that
15 currently the California Department of Corrections incarcerates
16 over 25,000 lifer inmates alone. As time goes on, more and more
17 of those folks are eligible to come before the Board of Prison
18 Terms.

19 In addition, every time that we deny a lifer
20 inmate who comes before us, that individual will either come
21 before the Board again, either within one, two, three, four,
22 five years at the most. Most of these cases are denied one
23 year, which means that within one year that case will come
24 before us again, in addition to all the other cases that require
25 initial hearings that are now coming due of those 25,000.

26 Some of the -- one of the issues that we've been
27 discussing with the Department of Corrections, and specifically
28 addressing the issue, is that it is apparent from our analysis

1 that approximately two-thirds of the postponements are requested
2 by inmates and attorneys as a result of a myriad of issues,
3 specifically the two most prominent are psychological reports
4 and parole plans that are not solid.

5 A third of those postponements are initiated by
6 the Board of Prison Terms as a result -- and California
7 Department of Corrections -- as a result of the same issues:
8 inadequate or psychological reports that are not up to date, as
9 well as a lack of panels within the Board of Prison Terms.

10 As you know, currently we have nine positions
11 within the Board of Prison Terms, of which six are filled, three
12 vacancies.

13 As the Chair of the Board of Prison Terms, I do
14 not go out in the field as often as the other commissioners.
15 I'm not out there on a daily basis since I'm responsible for
16 running the Board of Prison Terms. So in reality what you have
17 is, you have five out of nine commissioners that are out in the
18 field, conducting hearings on a daily basis.

19 When I -- shortly after I had been appointed
20 Chair of the Board, I addressed this issue with our executive
21 staff, and several months ago we met with Dr. Khoury, Nadim
22 Khoury, who is with the Health Services Division of the
23 California Department of Corrections. During that meeting, we
24 addressed the fact that the majority of the postponements are as
25 a result of issues with the psychological report: outdated
26 psychological report; contradictions from one psychological
27 report to another that had not been resolved; factors in
28 psychological reports that commissioners take into consideration

1 during their deliberations that are not present in the latest
2 psychological report.

3 We addressed those issues with the California
4 Department of Corrections several months ago and advised them
5 that these were some of the issues that we were looking at that
6 were contributing to a large extent to our backlog, and the
7 reason why inmates and BPT was requesting postponements.

8 We have been assured by the Department of
9 Corrections that within the next couple of months, they're going
10 to divert resources -- or actually not -- divert resources to
11 enable them to conduct psychological evaluations, a full
12 psychological evaluation, every two years. This would negate
13 the Board of Prison Terms having to come in at the last minute,
14 look at a psychological report, notice a number of issues that
15 are not -- that need to be addressed, and have to request a new
16 psychological report.

17 SENATOR BOWEN: Let me ask you a question about
18 that, because I was going to get into the psychological reports.

19 Not all of the parolees are up every one or two
20 years, right? So, if you have somebody who's up every four or
21 five, ordering a new psychological evaluation every two years
22 would seem to me, and I don't know your Department, but it would
23 seem to me to be a waste of resources.

24 MS. PEREZ: What the Department of Corrections
25 has agreed to do is, they will conduct an initial extensive
26 psychological evaluation. And then what they will do is, they
27 will conduct an addendum, which take much shorter time. So, if
28 nothing has changed during that two-year period, the

1 psychologist will then provide an addendum.

2 SENATOR BOWEN: I understand, but if you have
3 somebody whose parole hearing isn't until four or five years,
4 why would you, in that four-year period, conduct two updates
5 instead of one?

6 MS. PEREZ: In those cases, my assumption is that
7 they would assure that those psychological reports were no later
8 than two years by the time that that parolee comes before the
9 Board of Prison Terms. So, when a case comes before the Board
10 of Prison Terms, that case will be no more than two years old.

11 SENATOR BOWEN: A two-year old psychological
12 assessment is always acceptably current?

13 MS. PEREZ: Not necessarily. We can have -- you
14 can have a psychological report that's five years old, and if in
15 that psychological report all the variety of factors have been
16 addressed appropriately, such as remorse, insight,
17 dangerousness, and such, if all those factors that commissioners
18 look at in determining suitability have been addressed, and
19 nothing has changed within that two-year period, then there's no
20 reason to conduct another full psychological evaluation.

21 However, if there are outstanding issues that
22 have not been addressed during that two-year period, or if the
23 inmate has deteriorated in some form, then we would require an
24 addendum to that, that outlines those specific issues, or at
25 least resolves them to some extent, so that the panels can have
26 the most up-to-date information available in making their
27 decision.

28 SENATOR BOWEN: How many of the postponements are

1 as a result of a psychological evaluation that is not current;
2 do you know?

3 MS. PEREZ: I would say a great majority, a great
4 majority.

5 SENATOR BOWEN: It seems to me that you may be
6 better off with a slightly more tailored look at the
7 psychological report than just using a two-year rule.

8 If you've got a four-year or a five-year parole,
9 you may trigger the psychological report beginning a year before
10 the hearing, rather than just every two years.

11 MS. PEREZ: And that is the process that the
12 Department of Corrections had put in place. The agreement with
13 them is that they would have psychological reports that would be
14 available to the panel that would be no more than two years.

15 So, if we're denying somebody for five years, he
16 assumption is that the Department of Corrections would not
17 conduct that psychological evaluation, that full evaluation,
18 until at least two years or less prior to that individual coming
19 before the Board.

20 SENATOR BOWEN: Okay.

21 I received, subsequent to our conversation, a
22 communication that indicated that your record of granting
23 paroles changed, comparing the time that we were in session and
24 the end of the session.

25 I have no idea whether that's true or not. Can
26 you respond to that allegation?

27 MS. PEREZ: My voting record?

28 SENATOR BOWEN: The percentage of paroles

1 granted. Not to say that there's anything wrong, necessarily,
2 with a change.

3 MS. PEREZ: I can honestly say that that has
4 absolutely no merit whatsoever.

5 SENATOR BATTIN: If I can just interrupt you for
6 a second.

7 I can tell you exactly what the percentages are
8 because we looked into it. The Chair, of the hearings that
9 she's had, have granted eight percent of parole --

10 SENATOR BOWEN: I have the overall percentages.

11 My question was a temporal one. It was whether
12 there was a difference between what happened during her
13 appointment and the end of the last legislative session.

14 MS. PEREZ: I think the difference might be that
15 there are periods of time that I have not gone out and conducted
16 hearings because of myriad of issues that I was dealing with at
17 the Board of Prison Terms.

18 So, I think that you will find, if you look at my
19 schedule in which I have been out conducting hearings, that
20 there have been maybe a two-month period when I was out quite
21 often, and then maybe a couple of two, three months where I was
22 not out nearly as often, and that would make a difference as
23 well.

24 SENATOR BOWEN: My other questions to you have to
25 do with Battered Woman Syndrome determinations, which you and I
26 spoke about before.

27 My concern was that there's only one person in
28 the State of California who evaluates, does a full evaluation,

1 on Battered Woman Syndrome, and that that person never actually
2 meets with the applicant. All he does is review the file.

3 I would like your evaluation of that practice,
4 how it works, whether or not you think it's sufficient?

5 MS. PEREZ: I'd be glad to address that.

6 Let me give you a little bit of an historical
7 perspective on Battered Woman Syndrome.

8 The Board of Prison Terms takes into
9 consideration Battered Woman Syndrome specifically, and for the
10 most part, during life parole consideration hearings. That's
11 where most of our Battered Woman Syndrome investigations are
12 eventually -- they are eventually referred to a panel prior to
13 the inmate's hearing.

14 What typically happens is, a case will be
15 referred to the Board of Prison Terms in which an inmate will
16 allege that Battered Woman Syndrome or domestic violence was a
17 factor to her commitment offense that was not considered during
18 her criminal trial.

19 That case is then assigned to an investigator.
20 An investigator will personally meet with the inmate and conduct
21 anywhere from a two, three hour interview with a particular
22 inmate.

23 The things that they will focus in on, actually
24 what they do is, they actually -- because I used to be an
25 investigator and I used to conduct these investigations, you
26 literally start from their earliest childhood memories, and all
27 the way to the moment that the offense was committed to give you
28 a perspective and a foundation of this individual that's sitting

1 before you.

2 You then take -- the investigator then uses that
3 information, as well as any allegations of domestic violence and
4 such, anything that would support Battered Woman Syndrome, and
5 conducts an investigation. For example, if I have an inmate who
6 tells me, "I lived in Sacramento County, and my husband battered
7 me 20 times." Of those 20 times, the police were called on five
8 separate occasions.

9 What that investigator will do is, they will
10 contact law enforcement to try to substantiate her claim that in
11 reality she did call, or that law enforcement was called five
12 different times because of domestic violence within the
13 household.

14 If the inmate claims that I was hospitalized on a
15 couple of occasions because of broken bones, black eyes, or
16 whatever case may be, our investigator will also contact that
17 medical facility in an effort to obtain that information, again
18 to substantiate her claim.

19 The investigator will make every effort to
20 contact ex-girlfriends or ex-husbands of the victim -- well, not
21 the victim in this case -- but the person that the inmate may
22 have killed as a result of this offense. We contact neighbors.
23 We contact the person across the street. We contact employers.
24 We contact everybody that we can, family members on both sides,
25 to try to substantiate, one way or another, whether or not it
26 appears that domestic violence was a factor that rose to the
27 level of Battered Woman Syndrome, and that it was not taken into
28 consideration during the criminal proceeding.

1 Once the investigator completes their
2 investigation, we don't always forward the investigations to our
3 expert. The only cases, for the most part, that we forward to
4 our expert, Battered Woman Syndrome expert, are those in
5 which -- that are inconclusive, in which the investigator is
6 having difficulty substantiating whether or not Battered Woman
7 Syndrome was a factor at the time of the offense, as well as
8 others that are partially substantiated.

9 When that information is sent to our expert, the
10 expert not only listens to the tape of the interviews -- and I
11 should back up and say that the investigators have all received
12 training from Dr. Bowker, who is our expert, on the type of
13 questions and how to ask questions in conducting these type of
14 Battered Woman Syndrome interviews. So, Dr. Bowker will receive
15 a copy not only of the product, the investigative completed
16 product from the investigator on what they were able to
17 substantiate and not substantiate, but they will also receive a
18 copy of the tape recording of the interview, as well as any
19 other documentation that the investigator may have used in
20 conducting that investigation. That can include anything out of
21 the Central File, anything out of the murder book, psychological
22 information, medical information, and such.

23 Dr. Bowker will then listen to the tape and take
24 into consideration all of the information, the investigation and
25 all of the information I just indicated, and then make an
26 assessment whether or not this person -- whether or not Battered
27 Woman Syndrome was a factor at the time of the commitment
28 offense, and if so, to what extent.

1 It's important to recognize that there are also
2 occasions where Dr. Bowker will actually return those cases to
3 the Board of Prison Terms asking for additional inquiry with the
4 inmate if the Dr. Bowker believes that there were certain
5 questions that have to be asked that were not asked.

6 Dr. Bowker is a criminologist-sociologist who has
7 testified in over 50 Battered Woman Syndrome cases. He's been
8 deemed a Battered Woman Syndrome expert in 50 different cases,
9 to include a couple of precedential cases, the Day case and the
10 Humphrey case.

11 I think that if we had all the -- I think this
12 has -- given the parameters under which we operate, I think this
13 is a great system. That doesn't mean that it's a perfect
14 system, and that doesn't mean that there aren't more things that
15 we couldn't do.

16 With unlimited resources, we could -- one of the
17 things that we talked about doing is actually sending a
18 psychologist with the investigator to interview the inmate. The
19 other thing that we talked about is actually having a
20 psychologist conduct a battery of tests that would evaluate the
21 individual and whether or not Battered Woman Syndrome was
22 present at the time of the offense.

23 But it's also important to understand that by the
24 time we come in and start trying to make a determination, once
25 we conduct our investigation as to whether or not Battered Woman
26 Syndrome was present, it's twenty years later. This inmate may
27 or may not be telling you relevant facts, or truthful facts,
28 relative to what occurred. We sometimes have situations where

1 an inmate comes in, and they will say all the right things that
2 rise to the level of Battered Woman Syndrome. Once we conduct
3 our investigation, we find that that information is either not
4 substantiated, or to some extent it's been fabricated.

5 I think what's important to recognize is that by
6 the time Dr. Bowker receives that case, not only does he have
7 all the information, but he has information that's
8 substantiated, that he would be able to use in determining
9 whether or not Battered Woman Syndrome was a factor.

10 Is it the perfect system? Absolutely not. It's
11 not a perfect system. I think that we definitely need to garner
12 more resources, particularly in the area of psychological
13 assessments and tools in order to assist us better in
14 determining whether or not BWS exists.

15 SENATOR BOWEN: Is Dr. Bowker paid on a
16 case-per-case basis?

17 MR. PEREZ: He's paid on case-by-case basis.

18 SENATOR BOWEN: Then why don't we use more local
19 experts, closer to the place where the event occurred?

20 I don't understand why we would give one person
21 basically a government monopoly on doing this work when there
22 are many qualified experts in other parts of the state, and
23 where it might be actually quite interesting to be able to see
24 how differently the criteria are being evaluated.

25 MS. PEREZ: We're actually in the process of
26 doing that. The Investigations Division is actually in the
27 process of looking at soliciting other individuals that might be
28 available to do this, because we recognize for this first part

1 that using one individual may not always be the best thing to
2 do, and that it's important for us to have other individuals
3 that have this type of expertise available to us.

4 SENATOR BOWEN: I suspect you weren't there when
5 he was chosen. Do you know how he --

6 MS. PEREZ: He was chosen because of his
7 expertise. He, as I indicated earlier, he's testified as a
8 Battered Woman Syndrome expert in over 50 cases. And he also,
9 from what I understand, he also testified in two precedential
10 cases that actually -- the Day and the Humphrey case, that I
11 think were very instrumental in getting the law changed to
12 enable Battered Woman Syndrome to be recognized as a factor at
13 the time of the commitment offense.

14 SENATOR BOWEN: In your answers, you say that
15 there are physical limitations. They're really budget
16 constraints --

17 MS. PEREZ: That's correct. There are.

18 SENATOR BOWEN: -- like the travel.

19 But part of that is self-inflicted by the
20 Department because if you have someone in Eureka, and that's a
21 long way and an expensive trip for somebody who's looking at
22 someone who's in a Southern California facility, that's a
23 problem that you could rectify.

24 MS. PEREZ: That's certainly an issue that we
25 will address.

26 SENATOR BOWEN: I have no further questions. I'd
27 just like to see continuing work on those particular questions.
28 I'm confident, based on the changes that you've made, that

1 you're going to be available to listen to the concerns of people
2 who want to see these issues addressed.

3 MS. PEREZ: Absolutely.

4 SENATOR ASHBURN: Mr. Chairman, I think Senator
5 Bowen has outlined the areas of concern.

6 I'm concerned with your answers, to be very
7 truthful with you. I'm expecting that you are going to
8 demonstrate leadership in this position.

9 And if there is a problem with a backlog that is
10 created by the timeliness and the accuracy in terms of the
11 proximity of the preparation of the psychological evaluation,
12 and hearings are being postponed, and that's the reason for
13 that, I would think that it's incumbent on you to solve it.

14 I listened carefully. I didn't hear a solution.
15 I heard a lot of words. I mean, you and your commissioners are
16 not going to be able to function unless this is solved, or we
17 accept that there will be an ongoing backlog that is simply
18 unacceptable.

19 MS. PEREZ: Let me address the issue of the
20 backlog relative to the psychological --

21 SENATOR ASHBURN: I don't want to hear about the
22 backlog.

23 I want to hear about what you're going to do.

24 MS. PEREZ: The psychological -- the
25 psychologists that currently conduct these evaluations work for
26 the California Department of Corrections. There are a couple of
27 -- we have addressed the issue of timely psychological
28 evaluations, as well as the factors that we would like to see

1 addressed in those psychological evaluations with the California
2 Department of Corrections. We addressed that a couple of months
3 ago.

4 They have indicated to us that within
5 approximately the next 60 days, they're going to divert
6 resources to enable those psychological reports to be current,
7 as well as to address the issues that are currently issues that
8 contribute to hearings being postponed as a result of
9 psychological issues that were not addressed.

10 Secondly, we are also working with the Council on
11 Mentally Ill Offenders to put -- to develop a unit that would
12 fall under the Board of Prison Terms, which means that we
13 would be responsible -- we would actually be -- have oversight
14 over the psychologists. We would have oversight over the
15 psychologists, how often all those psychological reports are
16 conducted, the quality of those psychological reports, as well
17 as the tools, the assessment tools that would be used by the
18 psychologist at Department in preparing these evaluations for
19 us.

20 The other issue that we're also looking at is the
21 concept of court clerks. These would be individuals that would
22 be in the institutions who would, prior to a case being
23 scheduled, put on the schedule -- because these cases have to be
24 put on the schedule at least 30 to 45 days in advance. Because
25 of the law, we are required to give notice to a variety of
26 parties. So, we would have individuals at the institutions who,
27 60 days in advance, before the case ever gets on the schedule,
28 they would conduct a review of the Central File, and the files

1 that would go to the commissioners, to ensure that everything
2 was in order, the psychological report was up to date, and that
3 all those issues within the psychological report the
4 commissioners rely on to make a decision are actually addressed.

5 So that we don't end up in a situation where a
6 case is scheduled, and then, the case is postponed at the last
7 minute because we -- we definitely need at least a 45-day lead
8 time in order to put somebody on the schedule and make proper
9 notifications.

10 SENATOR ASHBURN: What I really am asking is
11 this.

12 When there are problems like the lack of timely
13 psychological reports, like the lack of personnel resources to
14 deal with Battered Woman Syndrome, whatever it is that is
15 preventing this Board from conducting its work, are you going
16 get in there and fight to get it fixed? Or, are you going to go
17 along with the way things have been done in the past?

18 That's the issue that's before us.

19 MS. PEREZ: My objective is to look at all the
20 systems within the Board of Prison Terms and to improve them,
21 find ways to improve them.

22 We have already improvements within the Battered
23 Woman Syndrome system and the process that we use to investigate
24 these cases that I'd be happy to talk about. We've already done
25 that since I've been there.

26 And we are already addressing the issue of the
27 backlog with the California Department of Corrections as it
28 specifically relates to issues with the psychological report,

1 which is the biggest factor.

2 SENATOR ASHBURN: Have you prepared a schedule
3 for working yourself out of the backlog in anticipation that
4 you're going to have this new and improved process on
5 psychological evaluations?

6 MS. PEREZ: Yes, we have. And that plan takes
7 into account that we will -- we've been working very diligently
8 with the Governor's Office, and anticipate that our three
9 vacancies will be filled in short order.

10 SENATOR ASHBURN: I understand that.

11 MS. PEREZ: And in looking at that, and also
12 looking at the psychological evaluations and making certain
13 assumptions on the number of hearings that will be conducted
14 within the next year because you can't -- we cannot come up with
15 a -- I cannot give you a number of how many hearings are due
16 next year because tomorrow, a case that comes before the Board
17 might be postponed.

18 So, based on our assumption, and I don't recall
19 off the top of my head how long it would take us to get rid of
20 that backlog, but we do have a plan in place that takes into
21 account that if we put -- when we put these processes in place,
22 it will enable us to get rid of this backlog.

23 SENATOR ASHBURN: I want to know, seriously, I
24 want to know when the backlog is eliminated. I don't know if
25 that happens in '05, '06 or '07, but I would think that since
26 that is a critical issue that's preventing your commissioners
27 from carrying out their functions, that that would be
28 extraordinarily high on your priority list. And yet, you can't

1 give me that date?

2 MS. PEREZ: It absolutely is. And that's why
3 we've met with the Department of Corrections, and that's why
4 we're looking at --

5 SENATOR ASHBURN: But yet, you can't give me that
6 date. I mean, I can't think of anything else --

7 MS. PEREZ: Actually, I have that -- I have a
8 document. I don't recall exactly what the timeframe --

9 SENATOR ASHBURN: But you can give me every
10 chapter and verse on the details of how these reports are
11 prepared, and who passed the buck to whom, and which department,
12 and this Dr. Bowker about Battered Woman Syndrome.

13 I don't care about any of that. What I care
14 about is that these hearings take place and that they're fair.
15 That's what I care about. You don't have that information for
16 me.

17 MS. PEREZ: What I don't have for you, sir, is an
18 exact date when we will eliminate the backlog, because there are
19 so many factors that come into play.

20 But what I can tell you is that we are taking
21 steps, and have been taking steps, in working with the
22 California Department of Corrections to address those issues
23 that we know contribute significantly to this backlog.

24 SENATOR ASHBURN: Thank you.

25 SENATOR CEDILLO: Let me give that a try, because
26 I share in Senator Ashburn's frustration.

27 We're all looking for efficiencies in processes
28 to address many of the issues that confront us in the various

1 oversight committees that we sit on. It's a lot of long
2 afternoons.

3 The responses that we've gotten in others is,
4 people come back and say, Here's the problems; here's the plan;
5 here's the date; here's when I'm going to come back and tell you
6 how we're making progress on these dates. Here's why we had the
7 backlog problem; here's why we have these problems.

8 I think that's what we're looking for. Is that
9 correct, Senator Ashburn?

10 There is a specific problem that we have with
11 respect to us incarcerating and holding foreign nationals,
12 noncitizens. People who are not on an INS hold, but people who
13 have committed crimes that are citizens of another country and
14 are not citizens of ours.

15 I have been informed that you had expressed in a
16 letter communicated to Senator Romero that we had 6500
17 prisoners -- I'm rounding up -- who were considered eligible for
18 transfer.

19 I want to know how many were transferred? What's
20 the plan to transfer them?

21 These are costs that the state is bearing for
22 holding prisoners that should be more appropriately housed in
23 their countries of origin.

24 So, how many were transferred, and what's the
25 plan to transfer? What's the plan and schedule to reduce these
26 6500 people that we are holding in incarceration, that we are
27 feeding, that we are caring for, that we are engaged in all
28 these activities that we engage in at a cost, a significant

1 cost, to the State of California?

2 It's one-fifth of our population, it appears; 20
3 percent.

4 MS. PEREZ: Relative to the issue, and are you
5 specifically talking about those foreign nationals from Mexico,
6 or just all foreign nationals?

7 SENATOR CEDILLO: No, no. This is not a Mexican
8 problem, but eligible for consideration for transfer, 6500
9 people.

10 MS. PEREZ: One thing that I think is very
11 important to understand is that before we can consider an inmate
12 for transfer to their state of citizenship, that inmate has to
13 be willing to go.

14 We have distributed information to the California
15 Department of Corrections which outlines our program, outlines
16 the program, outlines the process for initiating a transfer to
17 their country of citizenship.

18 The Department of Corrections forwards that
19 information to us. We conduct an investigation. After we
20 conduct our investigation, if the case is approved, we then
21 forward it to the Department of Justice, and then to the
22 Consulate General.

23 All three parties have to be in agreement that
24 this individual meets the -- or should be transferred before
25 that individual will be transferred.

26 It's important to recognize that unless that
27 individual raises their hand and say, "I want to serve the
28 remainder of my sentence in my home country," we cannot initiate

1 the process to try to transfer him to that country.

2 We don't have a large percentage of individuals
3 who do that. And I know that at least -- particularly in
4 Mexico.

5 And not only that, in this process the majority
6 of those individuals that want to transfer to their country of
7 citizenship don't meet the criteria; not our criteria, but the
8 criteria of the receiving country.

9 For example, in Mexico, Mexico will not take
10 individuals that are life inmates, death penalty inmates. They
11 will not take individuals that have lived in the United States
12 more than five years prior to their committing their offense.

13 So, oftentimes we have cases that come before us
14 that we conduct investigations on for the purpose of
15 transferring them, but yet they don't meet the criteria of the
16 country in which we're trying to transfer them to.

17 SENATOR CEDILLO: That's the problem. I
18 understand that as the problem.

19 The question, though, still remains what's the
20 plan? What's the strategy to move 20 percent of our prison
21 population?

22 MS. PEREZ: Sir, it's important to understand
23 that unless the inmate wants to transfer, we cannot force them
24 to transfer.

25 CHAIRMAN PERATA: Is that a federal law, state
26 law, case law, divine law? Where'd that come from?

27 MS. PEREZ: I believe it's a federal law that
28 prohibits us from -- we can provide all the information in the

1 world that we want to, and we do provide that information in the
2 from of a brochure to the California Department of Corrections
3 for distribution to the inmates, for those that are eligible.
4 But unless they are willing to raise their hand and sign a
5 document, we don't even start the investigation because that
6 inmate has to want to go.

7 So what happens is, although you have a large
8 number of these folks within the institutions, a very, very
9 small percentage actually want to go, will raise their hand and
10 say, "We want to go."

11 CHAIRMAN PERATA: We can move on. I got that
12 much.

13 SENATOR CEDILLO: I'm working with Senator Romero
14 on this, and she's looking very hard at this question with
15 respect to helping us hold down costs; right? Her concern is
16 with respect to constructing a data base.

17 I understand, if people don't want to go, they
18 don't have to go. That's what you told us.

19 But I want to make sure that we have the accurate
20 data, I mean, the baseline information to determine that we're
21 asking every person whether or not they want to go or not go.

22 I want to know. This is not simply a question of
23 country of origin. I want to hear, just as Senator Ashburn
24 said, what's the plan?

25 I know what the problem is. The problem is
26 that's an option, and if people don't want to exercise that
27 option, that's a bar; that's a block. I'll take that.

28 My question is, what is your plan? What is the

1 number of people that we have who are eligible for consideration
2 of transfer?

3 Then what is the plan to survey them, to place in
4 the mechanisms, the timetables, the benchmarks to have that
5 question asked so that we can facilitate that? And then, when
6 are you going to report to us on that progress?

7 MS. PEREZ: We would certainly with happy to
8 address that issue with the Department of Corrections. We are
9 certainly in favor of having accurate information, particularly
10 in the form of some sort of IT system that would provide us
11 specific information relative to who was eligible, or who are at
12 least citizens of other countries.

13 I can assure you that we will definitely work
14 with the Department of Corrections and get back to you at least
15 within the next couple of weeks relative to what our plan will
16 be to address this particular issue in collaboration and
17 cooperation with the California Department of Corrections.

18 SENATOR CEDILLO: I have a stack of opposition to
19 your appointment. I don't know you, as I say, from Eve.

20 My threshold, my criteria, for appointments is
21 usually focused around the question of integrity and honesty.

22 I recognize that the Governor and I may have some
23 policy differences, and he has the right to appoint.

24 This is not a job review. It's not a performance
25 review, although the record should reflect that your approval
26 record of parolees is not distinctly different from any of other
27 Board members.

28 I think, Jim, you have the chart that reflects

1 that.

2 SENATOR BATTIN: She actually grants more paroles
3 than any of the other members.

4 SENATOR CEDILLO: Right, and were very judicious
5 in granting those. I don't have any qualms with that. And I'll
6 reserve some questions for the next candidate.

7 But I do have a personal inquiry, and I want you
8 to come back to me before we go forward.

9 I have received inquiries from people whom I do
10 know over period of time with respect to a specific inmate, an
11 inmate named Eric Knapp, who has been held in solitary
12 confinement, I believe, in Lancaster. So, I want to talk to you
13 about information regarding him. I can give you more
14 information. Would like some feedback, a report, from you.

15 MS. PEREZ: All right, sir.

16 CHAIRMAN PERATA: Senator Battin.

17 SENATOR BATTIN: Ms. Perez, I think you're doing
18 a great job.

19 MS. PEREZ: Thank you.

20 SENATOR BATTIN: I understand the pressures of
21 sitting before this Committee and having to try to anticipate
22 every question that's thrown out to you in advance.

23 In the time that we had together and talked, I
24 was struck by, and as a matter of fact, commented to two of my
25 staff after you left, which was basically, "Whew, she's a hard
26 charger. She is committed to this, and she's working really
27 hard and trying to fix what she thinks is a problem."

28 The backlog that we have was not created under

1 your watch; was it?

2 MS. PEREZ: No, sir.

3 SENATOR BATTIN: So, you were given a backlog
4 when you came into the position, plus we had a new piece of
5 legislation that passed as well?

6 MS. PEREZ: That was extended. It was Assembly
7 Bill 2 that was extended that enabled the Board of Prison Terms
8 to continue conducting hearings with one commissioner.

9 I would like you to know, just to set the record
10 straight, that there was backlog when I was appointed Chair.
11 That backlog has increased.

12 SENATOR BATTIN: I mean, I think what everybody
13 on the panel here and certainly everybody in the state just
14 wants to make sure that we try to expedite, get those done, and
15 get rid of the backlog.

16 And you have a plan to do that; correct?

17 MS. PEREZ: Yes, sir.

18 SENATOR BATTIN: Is it possible to give us a
19 date?

20 MS. PEREZ: Actually it is. My Executive
21 Officer, who actually prepared this document, because I had
22 asked that specific question. If we had A, B, and C in place,
23 how long would it take us to get rid of this backlog? He's
24 indicated that it would take approximately eight months if we
25 had eight panels running full time.

26 CHAIRMAN PERATA: You're down three right now?

27 MS. PEREZ: We're down three, that's correct.
28 And keeping in mind that as the Chair, I'm not out there on a

1 daily basis.

2 SENATOR BATTIN: Thank you.

3 I'll move the confirmation.

4 SENATOR BOWEN: Mr. Chair, one footnote to that,
5 if I might. I know we're taking a lot of time with this.

6 I'm hesitant to press you on a date for
7 elimination of the backlog because it's so dependent on what
8 resources you have.

9 MS. PEREZ: Absolutely.

10 SENATOR BOWEN: And I'm well aware that you could
11 eliminate at least some portion of the backlog by simply making,
12 in the future, by making all of the denials four and five year
13 denials instead of one year denials. You could significantly
14 reduce your workload.

15 I want you to do your job, and to make decisions
16 about the length of the of the next parole hearing based on the
17 merits of what's before you, not based on your need to come
18 before this Committee, or any other committee of the
19 Legislature, to talk about the backlog.

20 And it is our responsibility to the deal with the
21 resource issues if you don't have the resources to get your job
22 done, not yours.

23 MS. PEREZ: Thank you.

24 CHAIRMAN PERATA: And that is an issue that will
25 be looked at. We have now created a separate budget committee,
26 Budget Sub Five, to look specifically at Corrections, so you get
27 your own spotlight.

28 I have a couple of questions. One is a

1 statement.

2 This is something that has been brought up, if
3 members of the Board of Prison Terms don't receive their
4 information in a timely manner, absent some unusual
5 circumstance, not only is there a cancellation, but you can't
6 prepare properly.

7 I mean, if I got this stuff on you today, you
8 wouldn't be going out today, assuming that you're going out
9 today.

10 So, I would like you to let me know, and you've
11 actually indicated that CDC is now functioning -- using my
12 terms, not yours. I want you to be able to go home tonight --
13 but if you're dependent upon, if your efficiency and
14 professional achievement is predicated on CDC providing you
15 properly, in a timely manner, I would like to see from you what
16 a perfect plan would look like. We can always scale it down to
17 imperfection. We're really good at that.

18 But I would like to know, it's troubling to me
19 for people not to be prepared, and not to have the information.
20 It cheapens the whole process. So that's one thing. I would be
21 interested in knowing what your plan would be.

22 Second, I'm disturbed by the fact that we have
23 85,000 revocations in '03-04, and if we have 85,000 revocations,
24 and we have 160-some-odd-thousand prisoners, we're violating
25 half of them, that has really become now a pattern and practice,
26 and I know why. I mean, I live in Oakland.

27 But in effect what we're doing is, we're using
28 the prison system, which is the most costly end, to take people

1 who are problematic off the streets, put them back in there for
2 two to six months, and then they pop them back out again.
3 Stupid.

4 What I would like to see is, from your position,
5 that there would be what kind of alternatives? Lord knows, you
6 see enough people who are there who aren't getting out, but
7 there are people who are getting out that we must have and
8 should have an intermediary process other than county jail,
9 which we tried a long time, to manage that because otherwise, a
10 number of things happen, not the least of which, it's a
11 self-fulfilling prophesy that our numbers and costs are going to
12 continue to rise.

13 And you don't hear too many people saying, "Well,
14 even though Medi-Cal, the caseloads are going up, there's
15 something we must do about it; we limit services or access."
16 Nobody is saying we ought to limit prisoners.

17 So, this is a runaway cost that we need to have
18 all parts of the system, including your own, address.

19 The other question -- that was a statement, this
20 is a question.

21 Governor Deukmejian's Corrections' Reorg. Plan
22 wants to abolish you and replace you with civil servants.

23 You've been there a bit, what do you think? How
24 would you make a case for you as a civilian as opposed to a
25 civil servant making these decisions?

26 MS. PEREZ: I think that in responding to that
27 question, it's important to have a system that is very selective
28 and also that enables the Board, or whatever body it is that

1 would be responsible, to be able to remove individuals that,
2 even after you go through this evaluation, recruitment process
3 to find folks that are very well balanced to make these types of
4 decisions, with very diverse backgrounds and such, I think that
5 it would be significant, just as the Governor does in selecting
6 his commissioners, that you have take into consideration their
7 background, their integrity, and a variety of other factors in
8 determining whether or not folks are going to be balanced in
9 making their decisions, and in evaluating all that needs to be
10 evaluated in determining whether or not somebody would be an
11 unreasonable risk to society.

12 So, I don't think it has as much to do with what
13 the classification is -- is it civil service or is it a Governor
14 appointed position -- but is it an individual that's going to
15 make those decisions that are going to be in the best interest
16 of public safety.

17 CHAIRMAN PERATA: Well, the Governor has
18 recommended that we consolidate CYA, BPT, and the Narcotics
19 Evaluation Authority.

20 What difference would you imagine that would have
21 on your work and responsibilities?

22 MS. PEREZ: I would imagine that in terms of
23 resources, particularly on this backlog lifer issue that we're
24 talking about, if we have 17 members, all -- if they were all,
25 for sake of assumption, if they all had the ability to conduct
26 different hearings and not just those that were particularly
27 germane to the NAEA, or the Youth Authority Board, or the Board
28 of Prison Terms, that would give us the opportunity, or at least

1 make available to us, those resources that we would be able to
2 deploy to the field, where ever the greatest need would be.

3 And I do want to point out one other thing that I
4 failed to mention relative to the lifer backlog.

5 One of the other things that we're doing is that
6 we recently had a conversation with the Department of
7 Corrections in which they have agreed to provide those files to
8 us in advance.

9 I think what that will do, not only will it give
10 the commissioners the opportunity to review those files, but it
11 will give them the opportunity to at least conduct a type of
12 cursory review that would bring to your attention issues that
13 would require postponement, that could not be resolved in a
14 timely basis, so that we could negate the inconvenience that
15 currently takes place for deputy -- district attorneys, victims'
16 next of kin, and other individuals that show up at the
17 institution at the last minute just to have that hearing
18 postponed.

19 So, that is another venue that we're -- another
20 action that we're taking at this time.

21 CHAIRMAN PERATA: You've been sitting there; I
22 haven't. Without passing judgment on eight percent, six percent
23 of those that come up for parole that are granted, but given the
24 overwhelming numbers, what effect does it have on the
25 psychology, or the sense of purpose, or resolve of an inmate,
26 given the staggering odds that you're not going to get out?

27 MS. PEREZ: When an inmate comes before a board
28 for a parole consideration hearing, the commissioners are very

1 diligent in discussing with them, once they are denied, they
2 discuss a myriad of factors, a myriad of factors during the
3 hearing.

4 If that inmate is denied, the commissioners on a
5 regular basis -- and I've been out to the field. I've reviewed
6 transcripts on a regular basis -- if they deny an inmate, they
7 also give them hope. They also advise them of those issues --
8 of what issues they need to address before they come to the
9 board the next time. They make it very clear why it is that
10 they're being denied, and they make recommendations for that
11 regulative to their involvement self-help, vocation,
12 literacy-type programs, and such, that they should take
13 advantage of before they come before the board -- before they
14 come before the board a year from now, five years from now,
15 whatever the case may be.

16 But the bottom line is that those commissioners
17 have the responsibility, and they have a very important
18 responsibility, in weighing all the factors and making a
19 decision that's in the best interest of public safety.

20 CHAIRMAN PERATA: Well, one thing you should wrap
21 your mind around coming into this budget year is that the
22 recommendation is to take \$95 million out of the Corrections
23 budget. And any idea that we're going to have a rehabilitation
24 system should go out with that money.

25 So, in some ways it's Hobson's Choice. You get
26 denied, and then you're asked to go back and become literate,
27 and then there's not the ability to be trained in literacy.

28 MS. PEREZ: And we recognize that.

1 CHAIRMAN PERATA: But as one of those people that
2 generally believes in salvation, it's a troubling treadmill that
3 we're on, we're all on.

4 We're now going to open it up for brief, brief
5 support and opposition. We have another appointee waiting in
6 the wings.

7 Yes, sir.

8 MR. MABRY: The mike is not working, so I'll
9 stand if it's appropriate.

10 CHAIRMAN PERATA: That's fine.

11 MR. MABRY: Chairman Perata and the Rules
12 Committee Members, first of all I'd like to say congratulations
13 on your appointment and welcome to new Rules Members.

14 CHAIRMAN PERATA: Thank you.

15 MR. MABRY: My name is Roy Mabry. I'm the State
16 President for the Association of Black Correctional Workers.

17 I'm here on behalf of my organization in 100
18 percent support for Chairwoman Perez. Hopefully, you'll be
19 giving her your blessing and make this official today.

20 Her work is something that's always going to be
21 controversial because of the decisions that have to be made.
22 When you tell person they will or won't, after doing 30, 40, 50,
23 60 years in prison, you're always going to have that base that's
24 got to be controversial about that. Once you do -- she's got a
25 job that I'm sure a lot of nights that it just keeps her up and
26 she can't sleep. It's got to have some long-term effects on
27 her.

28 We talked about that briefly once, and that's the

1 kind of thing we experience in this work.

2 But she is well equipped and prepared for it, and
3 she put herself in a position and deserves this opportunity.

4 Thank you.

5 CHAIRMAN PERATA: Thank you, sir.

6 MS. AGUILERA-MARRERO: Again, thank you very
7 much for affording me the opportunity to speak. Again, my name
8 is Suzanna Aguilera-Marrero, with the Chicano Correctional
9 Workers Association, State President.

10 I will leave a letter there, hand her a letter,
11 and let you know that I have met on several occasions with Ms.
12 Perez, and I respect the work that she has done, that she has
13 been doing, and that I know that she will continue to do.

14 I also invite each and every one of you, if you
15 would like, at your convenience, maybe attend one of the Board
16 of Prison Terms hearings to actually observe how the process
17 works, and how the procedures are set up. Perhaps that would
18 give you a little more insight as to what actually goes on, and
19 how challenging it really is to perform the job that is being
20 performed.

21 Thank you very much. And I am from Tulare
22 County, so I'd be more than happy to meet with you, Senator
23 Ashburn.

24 Thank you.

25 MR. FELIZZATTO: Mr. Chairman and Members, my
26 name is Dan Felizzatto.

27 I've worked for a large urban district attorney's
28 office for six years, as well as a staffer for the Legislature

1 and prior Governor.

2 I am strongly supporting Chairwoman Perez's
3 confirmation. I've follow the actions of the Board of Prison
4 Terms for the past 12 years and would like to say that the
5 Chairwoman's leadership has been some of the most impressive
6 that I've seen versus some of her predecessors.

7 I think she strongly deserves your support.
8 Thank you.

9 CHAIRMAN PERATA: Opposition, please. Again,
10 briefly if possible, briefly.

11 MR. GRAY: Mr. Chair and Members, I'm Matt Gray
12 with Capital Alliance, representing client Voters Corrections
13 Reform Coalition, and a coalition of businesses comprise Capital
14 Alliance.

15 A great many concerns about Ms. Perez's
16 appointment.

17 My entire life I've heard that the cure for
18 cancer is just around the corner, and it's still not here. And
19 I don't think I would offer to this Committee at least that the
20 time to shine has come and passed for Ms. Perez. If there were
21 changes to be implemented, that they would have already come.
22 And to say simply that we're going to do it, we're going to do
23 it, doesn't sell me, and I hope it doesn't sell this Committee.

24 A number of parole hearings -- I'm going to back
25 up. Something that just floored me, that the Board gives
26 inmates hope, that if they continue to program, and they
27 continue to behave the same as they've been behaving every
28 single time that they come before the Board, and continually

1 being denied, fills me with awe, how that comment can be made.

2 There is no hope in boilerplate language, that
3 you continue to do what you've been doing so you can be denied
4 next time, and there's no hope in telling person that you go,
5 and continue to take programs which do not exist.

6 Ms. Perez has perpetuated the backlog. Most
7 recently what is occurring at Mule Creek State Prison on C Yard,
8 which has a number of lifers waiting for their parole hearings,
9 the Board has authorized that, in violation of Title 15 of the
10 California Code of Regulations, Section 3379, that the hearings
11 can be postponed so that those inmates can be moved.

12 It was a matter of administrative convenience
13 that their due process rights were violated. And I don't see
14 how that helps at all to improve the backlog that is supposedly
15 just around the corner in being relieved.

16 The governing statute which authorizes you as a
17 body to approve these appointments does not distinguish between
18 the responsibility of the Governor making the appointment and
19 the mandatory language of this Legislature to approve. And it
20 does make it quite clear in that statute that the Board members
21 are to be comprised of a cross-section, a diverse cross-section
22 of California's demographics, including economic background, and
23 that has not occurred in the last 30 of the past 31 Board
24 members. They have all been either law enforcement or victims
25 advocates.

26 That's neither good nor bad, but it's simply not
27 a diverse makeup that represents the demographics of California.

28 I would offer to you that in sharing the

1 responsibility with the Governor, I dare say that you also share
2 the culpability in continuing to appoint Board members which
3 only frustrate the system.

4 Penal Code 3041 clearly states that paroles shall
5 normally be set unless the Board finds that extenuating
6 circumstances make the crime particularly heinous. And what you
7 will find is, in nearly greater than 90 percent, which is
8 certainly not normally, greater than 90 percent of the parole
9 hearings end in a denial.

10 I would offer to you that instead of appointing
11 people who have impressive resumes in law enforcement, that you
12 appoint people who have a thorough understanding of the law,
13 maybe judges, attorneys, people who are experienced with
14 counselling issues, in determining whether or not a person is
15 truly likely to be a public safety threat. That maybe we
16 include clergy, some prison reform advocates, some school
17 teachers, and other people because we simply cannot expect to
18 keep putting the same people on the Board.

19 And I am in no way disparaging Ms. Perez. She
20 has a clearly impressive law enforcement background. But we
21 cannot expect changes if we keep maintaining the status quo.

22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MR. McQUILLION: Carl McQuillion. I have an
25 organization called the California Alliance for Political
26 Prisoners. I represent 25,000 lifers and their families.

27 I'm here today to oppose the appointment of
28 Ms. Perez, and I'd like to tell you why.

1 I work as a paralegal researcher and consultant
2 for several law firms up and down the State of California. I'm
3 on the litigation end of challenges against parole board
4 decisions. I have read every Superior Court case, every Court
5 of Appeal case, Supreme Court case, and federal case having to
6 do this Board of Prison Terms.

7 Repeatedly over the last couple of years or so,
8 these cases have come out, and even though most of cases upheld
9 the decision of the Board, a lot of them didn't, and even a lot
10 of the ones that upheld the decisions of the Board found that
11 the Board was abusing its discretion, time and again, time and
12 again, on issues, claiming that there was -- the psych report
13 wasn't clear, that they didn't have parole plans, they didn't
14 have this or that, when in fact they had all of those things.

15 So, I believe it's disingenuous to say that the
16 Board is carrying out their duty in an effective manner.

17 Senator Ashburn, I'd like to mention, you were
18 concerned about the backlog, as some of these other Committee
19 Members were -- are. And the backlog having to do with the
20 psych reports is not due to because they have problems getting
21 these psych reports. They have everything to do with the fact
22 that commissioners, when they look at these psych reports that
23 are favorable to parole, take sentences out of context and say,
24 "Well, it's not clear. That's just not a clear report," when
25 the bottom line of that report is absolutely clear that this
26 inmate does not have a risk to public safety if he's released.

27 Senator Bowen, you mentioned the four to five
28 year denials. The statute that speaks to when they're supposed

1 to hold hearings within certain timeframes do not allow for the
2 Board to use those multi-year denials as a way to manage their
3 in caseload. It is very specific as to how and why they can
4 deny parole, but certainly not to manage a caseload.

5 Additionally, Senator, I kind of blanked out,
6 too. Let me get back to where I was at.

7 Recently, the Eastern District Federal Court, in
8 the case of Coleman versus Board of Prison Terms came out -- the
9 magistrate came out with his findings. He's expected to be
10 upheld by Judge Carlton.

11 Came out and says, "What do you mean you don't
12 have a no parole policy?" Basically that's what he said. "What
13 do you mean you don't have a no parole policy? You've had a no
14 parole for the last 15 years."

15 And that was based upon extensive evidentiary
16 hearings, and testimony, and depositions from former Board of
17 Prison Terms commissioners. Even though the Supreme Court in
18 Rosenkrantz says that, oh, they don't have a no parole policy,
19 that was clearly disingenuous because the only six people that
20 Davis let out was people that he thought were innocent of the
21 crimes of which they were committed and should have been
22 convicted of something less.

23 So, as far as for his policy, it was clearly a no
24 parole policy, and the federal courts have found it to be so.

25 So, we've got two statutes that are at issue
26 here. Not only the statute of the backlog, but the reason that
27 the backlog -- for the backlog is because they won't grant
28 parole according to the terms of enabling statute, which is

1 Section 3041.

2 Let me jump again. As far as these issues of
3 parole, having parole plans, there is no part of their statute
4 or regulations that require that an inmate have to have firm
5 parole plans or residence in order to be found suitable for
6 parole.

7 All the regulation requires is, that person has
8 to have marketable skills. That's it.

9 They deny parole all the time based upon a guy
10 who's been in 25 or 30 years who doesn't have the resources to
11 obtain a firm job offer, or residence, or employment.

12 I have a letter from the Department of Parole and
13 Probation to an inmate, who sent me a copy, saying that having
14 firm parole plans or residence is not a requirement for release
15 from the Board of Prison Terms because the Department of Parole
16 and Probation has programs and provisions in place for helping
17 those inmates to obtain that residence and employment.

18 So, to deny a parole based upon a guy who has no
19 possibility or no resources to obtain a job or a residence is
20 just completely ridiculous when they can't even tell an
21 employer, even if they know of one they could write to, when
22 they're ever going to get out.

23 Would you give a person a job if he writes you
24 and says, "Would you give me a job? I don't know when I'm going
25 to get out of prison. I'm doing a life sentence." Would you
26 give him a firm job offer? That's what they require.

27 We oppose, because Senator Perez [sic] has not
28 come up -- I mean Ms. Perez, excuse me -- has not come up with

1 any viable plans to start granting paroles according to the
2 statute of this state, which is Section 3041, which says they
3 shall normally grant parole.

4 These people, and I know these people. I've
5 dealt with their cases for a long time, and I have read these
6 transcripts. I have read their documentation. Most of these
7 people are ready for parole. They're doing 25, 30, 35 years
8 beyond the matrix that is codified for their sentences, all
9 because Ms. Perez and the Board of Prison Terms has long had an
10 agenda to deny parole and to block paroles because of their
11 political agenda.

12 Thank you. We oppose.

13 CHAIRMAN PERATA: Thank you.

14 MR. CHANDLER: My name's Keith Chandler. I'm
15 here as an individual.

16 I oppose the nomination of the confirmation of
17 Ms. Perez for a very simple reason. I think Senator Ashburn hit
18 it right on.

19 She talked for about five minutes. I don't think
20 anybody up here knows what she said. She'd been working for the
21 Board for a very long time before she became the Chairman, she
22 became the Chairperson.

23 She said, by her own admission, she got to this
24 two months ago. It's the biggest problem at the Board. She
25 knew it two years before she got the job as Chairperson. Did
26 she do it because she cares about it, or did she do it because
27 the five of you were going to ask the question?

28 I think some of you really know the answer.

1 CHAIRMAN PERATA: Thank you.

2 MS. MATANGI: Hi. My name is Randy Matangi, and
3 I'll keep this short.

4 I am here, a member of the Voters Correction
5 Reform Coalition. And I vote to oppose the nomination of Ms.
6 Fisher to the Board of Prison Terms.

7 CHAIRMAN PERATA: No, this is Perez.

8 MS. MATANGI: Oh, I'm sorry.

9 To appoint Ms. Perez to the Board of Prison Terms
10 would only perpetuate the gross imbalance which already exists.
11 Absent of any such changes, the intent within the existing
12 statute ought to be observed.

13 Thank you.

14 CHAIRMAN PERATA: Thank you.

15 MR. WARREN: My name is David Warren. I'm a
16 member of the Family Council.

17 Senators, Senator Cedillo, you raised the issue
18 of inmates who want to be returned. I'll give you one example
19 that perhaps the department -- the Board of Prison Terms should
20 examine.

21 Isaiah Kersch, E-49648, has been trying to return
22 to Israel for the last six years. The Ministry of Justice for
23 the State of Israel will accept him tomorrow. The Board of
24 Prison Terms will not release him because there is a possibility
25 that if he's returned to Israel, instead of spending 20 years in
26 prison, he could be released on parole 15.

27 The cost of these inmates are denying the
28 students in my community, Citrus Heights, an education. Today

1 the Board of Education in Citrus Heights, the San Juan School
2 District, had to close schools, fire counselors, et cetera,
3 because there is no money for teachers.

4 If those 6500 inmates are returned to their
5 country of origin, for which are treaties -- now, I understand
6 there are problems in certain countries where drug lords rule,
7 and these inmates may not actually have to be incarcerated. But
8 in European countries, in Israel today, I know of over 500
9 inmates who want to be transferred, who will not be transferred
10 by the Department, by the Board of Prison Terms because they
11 fear that they will not have to serve the full term provided by
12 law in California. They will serve the term provided by law in
13 the country to which they would return.

14 Mr. Gray has commented on several of the points
15 that I would make, and I will not be redundant and waste your
16 time.

17 But I do want to make one point. Senator Perata,
18 you made an excellent point. As a member of the Family Council,
19 I receive approximately 300 communications a month either by
20 e-mail or letters from family members of the incarcerated.

21 The tension inside the state prisons is so great
22 today that it is ready to explode. We will have an Attica-style
23 riot in the immediate near future. Men are shaving their heads
24 and preparing weapons.

25 The reason is, they feel an absolute sense of
26 hopelessness that they will never get out. They believe that
27 the Board of Prison Terms will never grant them parole, even
28 though they're well within the matrix.

1 That sense of hopelessness is compounded by the
2 fact that we have a large number of inmates going in and very
3 few coming out. The result is dramatic overcrowding, lack of
4 secured facilities for inmates. And I believe the Department of
5 Corrections even recognizes that problem because due to the
6 unfortunate circumstance, which is unconscionable, an inmate
7 killed a correctional officer, every state prison in the State
8 of California was locked down because I believe that the
9 intelligence that we have received from family members is
10 shared, is equally well known to the staff at CDC, and they fear
11 a statewide, uncontrolled disturbance.

12 The only way for these things to change is if
13 you, as a Senate committee, change one very important policy. I
14 respect your position that your job here is to examine a nominee
15 based on their integrity. I respect that.

16 But we are at a point, a dangerous point, an
17 explosive point where, unless something changes, we are going to
18 have an expense in lives, and in costs, in litigation, that it
19 will be so out of control that it will make the Department's
20 budget an insignificant problem.

21 That's why we request that you deny the
22 nomination of both Ms. Perez and Ms. Fisher.

23 Thank you very much.

24 CHAIRMAN PERATA: Thank you, sir.

25 MS. CHAPPELL: Good evening now. I'm Sarah
26 Chappell. I'm a psychologist in Fresno County, California,
27 where I work with parolees and their children who are oftentimes
28 in foster care because their parents are in prison.

1 And so, I want to strongly oppose the
2 confirmation of Ms. Perez because I feel that is a maintenance
3 of the status quo, and it is a very broken system.

4 And I think we all heard today that there is no
5 plan, no solution, and so status quo is not acceptable to me.

6 Also, neither is a two-year-old psychological
7 report. I'm a psychologist, and I'm here to tell you that I
8 would never, never in my wildest dreams, ever base any kind of
9 decision about any individual on a psychological report that was
10 two years old. That's crazy. And to say that that's acceptable
11 is outrageous.

12 So, I really hope that you consider this, and
13 consider that we need reform and change. And so, this is one
14 area where we can be committed to that.

15 CHAIRMAN PERATA: Thank you.

16 MS. BIRD: Senator Perata, honorable Committee
17 Members, I am Cayenne Bird, Director for United for No
18 Injustice, Oppression or Neglect, acronym UNION, representing
19 the 6,000 families of inmates and their children. These are the
20 other crime victims that really aren't recognized enough for
21 their suffering.

22 I'm very well aware that there are some people
23 who are severely mentally ill or physically ill who need to be
24 taken out of society.

25 But what we have inside these prisons, and I know
26 because I've been taking complaints from all 33 prisons for
27 going on seven years now on a daily basis. I know all the
28 horror stories. I know that nine inmates have died under

1 suspicious circumstances since September. I know all the
2 horrible things that go on.

3 The attitude is that the Board of Prison Terms is
4 corrupt, that is system is corrupt from arrest through parole.

5 And there is this feeling of hopelessness. I
6 can't state it enough.

7 And I, too, believe that there is an underlying
8 current where violence is expected because nothing works right
9 in the system. If an inmate does a 602, he gets retribution for
10 it. They are afraid that it's going to reflect on their parole
11 hearings, anything they do to stand up for themselves, even down
12 to asking for surgeries.

13 I also have people from other countries who have
14 been denied any sort of parole by Corrections, and they won't
15 even entertain it. They can't even get as far as the Parole
16 Board. They can't manipulate within the system, and there seems
17 to be no place to go for help for these families. A few good
18 Senators, and that's about it.

19 The idea is, keep the human bondage industry
20 going. And that attitude of the healers versus the punishers is
21 what we have in these prisons.

22 I know more from the healers, the doctors, and
23 the psych techs, and the nurses, than I ever find out from
24 Corrections, the guards and so forth.

25 So, there's this push-me-pull-me thing going on
26 even within the employees of the system that needs to be
27 recognized.

28 Now, we oppose her appointment because she is so

1 solidly law enforcement.

2 We'd like to see doctors, teachers, nurses,
3 social workers, people who are healers. This is 2005. We want
4 to see some restorative justice instead of this retributive
5 thing from the Dark Ages which does nothing to protect the
6 public safety. In fact, it does more to cause crime than it
7 does to deter it.

8 That's all I want to say today, is that we need a
9 change. And we will oppose Susan Fisher for the same reason.

10 CHAIRMAN PERATA: Thank you.

11 DR. MILLER: Good afternoon, Mr. Chairman and
12 Senators. My name is Donald Miller. I'm a physician by trade.
13 I spent 20 years in prison, and I'm on parole. I'm a lifer
14 under the jurisdiction of the Board of Prison Terms.

15 While in prison, I obtained my law degree with
16 the assistance of the Bar Association. And for 20 years, I've
17 studied the commissioners, their backgrounds, and parole.

18 I'm in litigation. I'm employed by six attorneys
19 and law firms to right the law in this area. I've read hundreds
20 of hearing transcripts.

21 I have a great deal of respect for Ms. Perez and
22 her background, and for the integrity until I heard a couple of
23 comments that I'd like to remark on today.

24 However, I oppose her appointment for two
25 reasons. One, as has already been pointed out, your
26 predecessors passed a law in mandatory terms that states the
27 Governor shall appoint and the Senate shall confirm
28 commissioners who represent a cross-section of the state's

1 economic, gender, racial, and ethnic population. And you've
2 heard 30 of the last 31 appointments have either been crime
3 victims advocates or police backgrounds.

4 Secondly, and I say this respectfully, I see
5 nothing in Ms. Perez's background of any education or training
6 that qualifies her to make parole decisions at all.
7 Consequently, our parole board is different from that of any
8 other state. We don't have any former prosecutors, criminal
9 attorneys, judges, psychologists, psychiatrists, people who are
10 qualified to make parole decisions.

11 This came to light in my own case. I was kept in
12 prison two to three years longer than I should have been, and
13 had to actually go to court to force the Board and the Governor
14 to let me out. I was -- at every hearing I was told, just come
15 back and continue what you're doing.

16 This is the kind of hope I was given until I had
17 to do something about it myself. And now that I'm on parole, I
18 should have been discharged a year ago, but the Board is keeping
19 me on parole. I should have been discharged by law.

20 And one of your cohorts, a very respected
21 Senator, approached Ms. Perez on the subject. A letter came
22 back with totally false information in it. And when the Senator
23 sent his aide to speak to her about it, she was so rude to him
24 and cut him off and said they wouldn't discuss it any longer,
25 and said that the Board didn't have jurisdiction over it, which
26 of course it did.

27 Now, Senator Bowen asked a pointed question.
28 Respectfully, the Board isn't 1,000 hearings behind; it's 8,000

1 hearings behind. And 95 percent of all hearings are conducted
2 late.

3 When an inmate goes to his or her first hearing
4 and it's six months late, and is given a one-year denial,
5 they're not scheduled for another hearing in six months.
6 They're scheduled for a hearing in one year, and it's
7 cumulative. They are thousands and thousands of years behind on
8 these hearings.

9 There is no plan to catch up. We were told two
10 years ago there was a plan when the Legislature enacted the law
11 to allow them to catch up. Eight commissioners going full bore
12 at all the institutions cannot possibly catch up in eight
13 months, or even eight years, because the system of parole
14 denial, even to individuals like myself that were deemed over
15 and over again to pose no further risk to public safety, and
16 keeping them in prison, has set the schedule so far behind that
17 that program couldn't catch up in eight years.

18 And as far as the question from honorable Senator
19 Cedilla is concerned, it's not true that the reason that these
20 inmates are not being allowed to transfer to prisons in their
21 countries is that they don't want it. They're all requesting
22 it. The Board routinely denies it. The decisions are arbitrary.

23 And as far as any hope is concerned, that's a
24 crock because at the end of each hearing, these inmates, who are
25 uniformly assessed to pose no further risk to public safety, or
26 the lowest possible risk by forensic experts, 50 percent of the
27 time Ms. Perez votes against that. And the end of the hearing
28 they're told, just continue your present program and take

1 whatever therapy is available, even though they've taken all the
2 therapy, and there's no way that that inmate can improve himself
3 or herself any further.

4 If parole is denied based on the crime, the crime
5 is never going to change. And it's converted all these
6 thousands of sentences to life without any possibility of parole
7 at an enormous cost of about a half a billion dollars a year to
8 the taxpayers to incarcerate, of the 25,000 lifers, 3,000-5,000
9 who absolutely should be out here, like myself, paying taxes,
10 who pose no further threat.

11 And as you know, it's not \$30,000 a year cost.
12 It's more like \$60,000, because you know the cost of medical
13 care in the prisons is about four times what it is on the
14 outside. These people will all die in prison because, as my
15 predecessor pointed out, the statutes are not being complied
16 with.

17 I don't expect Ms. Perez to comply with the law
18 or even to understand it, because the people on the Board,
19 including the two new appointees -- and I say this in regard to
20 both of them, I won't get up here again -- have absolutely no
21 qualifications by training and schooling and experience to
22 determine parole.

23 Please say no to these appointees, and tell the
24 Governor that you're going to continue to say no until he brings
25 you somebody other than law enforcement and crime victims, and
26 somebody with training and qualifications to determine parole.

27 Thank you very much.

28 CHAIRMAN PERATA: Thank you, sir.

1 Next.

2 MS. BROWN: My name is Gail Patrice Brown, and
3 I'm also a member of Statewide Family Council.

4 And everything that Dr. Miller said I would just
5 like to confirm. I would like to oppose Ms. Perez also.

6 Thank you.

7 MS. VANNATTER: My name Alane Vannatter, Lanie
8 Vannatter.

9 I did sends all of you a letter. I absolutely
10 oppose Ms. Perez because of her law enforcement background.

11 I'm a former CDC officer. I was driven almost
12 insane by the illegalities and the sadistic treatment of guards
13 to prisoners. When I left, a year later when I finally got
14 myself back together, I became a prison reform advocate and a
15 prisoner advocate.

16 I also am associate with a lifer in High Desert
17 State Prison. When he goes to Board he's told, "You need to
18 upgrade your saleable talents." He's done everything he can do.
19 That man can walk out and find a job within 15 minutes. Like
20 many, many hundred other ladies, we have managed to find those
21 job offers for our men who are in prison if they get paroled,
22 even though we don't know they're ever going to get paroled.
23 They're termed lifers.

24 What I was told when I was working inside was
25 that one of the reasons that they do not give parole dates to
26 the indeterminate sentences are because they're afraid they're
27 going to release someone who was on the death row. Well, it's
28 all right there in the paper work.

1 But I also found that the Board very rarely reads
2 the files. In fact, one prisoner's last parole hearing,
3 somebody leaned back and said, "Well, I see, Mr. Fergurson, that
4 you have a stabbing." He says, "Yes. I was stabbed 16 times."
5 That was really very difficult to read, wasn't it.

6 We want some hope. I can tell you from my
7 association of Families of Prisoners, which I own -- it's a
8 nation-wide web site for families and for the prisoners that I
9 deal with -- that the statement of the hope dying is very true.
10 The violence is accelerating. You have these people who have
11 been in so long they do know how to work the system and
12 manipulate it. They get nowhere with 602s except retaliation,
13 which we fight for them because we have the voice out here that
14 they don't have.

15 I oppose Ms. Perez. I do not believe that she is
16 going to be fair because of her background. I listened to her
17 speak, and what I hear in her voice is contempt of inmates,
18 which is what the largest problem is.

19 These are human beings. God said we get a second
20 chance, but we sure don't in California.

21 And I oppose Ms. Fisher for the same reasons,
22 only in hers I'll go a bit stronger. I think by Ms. Fisher
23 being confirmed in appointment, you're putting a pedophile in
24 charge of the kindergarten. If you ever went to the Doris Tate
25 web side and read it, you would read a hate site. It is
26 unparalleled, and I think it should probably be illegal.

27 Thank you very much.

28 CHAIRMAN PERATA: Thank you.

1 MS. ROSS: I'm Joy Ross. I'm here to oppose
2 Ms. Perez pretty much for the same reasons as the rest of them.

3 The way the Board functions now, I associated
4 with an inmate inside. I'm also a paralegal. And he sent he
5 all of his stuff from his last hearing. And the psych report
6 said that he had very -- there was very little likelihood of him
7 re-offending.

8 However, the Board's report said that he was a
9 danger to society, and they gave him the option, if he chose not
10 to come up, he would get a four-year denial. If he did come up,
11 he would get a five-year denial.

12 When you have -- he did everything that the Board
13 wanted him to do. He did all the AA, NA, everything. He's got
14 job qualifications. And still they're denying him. That's the
15 way the Board functions.

16 I believe that Penal Code 5075 should be
17 followed, which says a cross-section of society and not all law
18 enforcement.

19 And I also believe that there's an old adage that
20 you rise to the level of your incompetence. And where I believe
21 Ms. Perez probably did an amazing job in her previous
22 appointments, I think she's risen to the level where she's not
23 able to function very effectively.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 MS. MUHAMMAD: Good afternoon. My name Ansarial
27 Muhammad. And I would just like to say that I was hoping that
28 someone would get up here today and speak on behalf of

1 prisoners' wives, which I am, and I'm very proud of it.

2 I do as much as I can in reference to reform and
3 support of the things that my husband need in our personal
4 situation; you know, how it effects me in our life.

5 But I also talk to women who are there, visiting
6 their family members, and I know that they also have the hopes
7 of their husbands eventually going up for parole one day, or
8 their cases being heard, and being heard in a fair manner.

9 I don't really know Ms. Perez. All I've been
10 able to do is observe what I've heard today.

11 The thing that was the most important statement
12 to me that I heard was Senator Ashburn say, which was, we want
13 things to be done in a fair manner. I'm hearing that after 30
14 or more appointees, we're not doing the fair thing. We're not
15 putting people in these positions, which I'm sure that she's
16 very qualified in what she's been doing and what she's going to
17 be doing, but this may not be the job for her.

18 I oppose putting someone in a position to do a
19 job where we have been putting people in a job, like I'm hearing
20 today, who are victims advocates, and who are a part of the --
21 who are a part of law enforcement.

22 And I just wanted to say in closing, the
23 definition of insanity is to continue to do the same thing over
24 and over again, and in this case, expects a different outcome.

25 Thank you.

26 CHAIRMAN PERATA: Thank you, ma'am.

27 MS. PAGLIASOTTI: My name is Jessica
28 Pagliasotti. I'm here as an individual and as a former law

1 enforcement officer.

2 And I can tell you, after seven years of working
3 in law enforcement, that if the Board is represented only by
4 people who have a background in law enforcement, you will in
5 fact have a very biased view.

6 For that reason I oppose both Ms. Perez and
7 Ms. Fisher. Thank you.

8 CHAIRMAN PERATA: Thank you.

9 MS. TUNSTALL: I guess I saved myself for last.

10 CHAIRMAN PERATA: Yes, I think you have.

11 MS. TUNSTALL: It was really hard, you know.
12 She's so cute. How can you oppose somebody who's so cute, and
13 little, and tiny, and has got this impressive record?

14 But I'm opposing her. But it isn't against her
15 personally. I think I'm actually doing her a favor, because how
16 can you put someone in a position of authority over the parole
17 board without giving them the tools and the power to fix it?

18 I mean, she's got these issues with the backlog.
19 Okay, how come -- you know, what is happening with CDC that she
20 can't go and kick their butt and say, you know, I need it done
21 now not yesterday. And basically, you know, they just tell her
22 to go away.

23 So technically I am an inmate's wife. I also
24 work with Prison Reform Unity Project, and Matt Gray with Voters
25 Correction Reform Coalition. I said that, wow.

26 I want to see a change. I've been waiting for my
27 husband for 28 years. My husband was a nonshooter in the crime.
28 The actual shooter went home over 15 years ago.

1 I had to fight to save my husband's life for the
2 last eight years, and it has cost me my health. I don't know if
3 you'd know, but I'm a little off. I have had a stroke, and I
4 have seizures. But I saved his life.

5 But you know, we postponed our last two hearings.
6 She had a point. We didn't know what to bring them. My husband
7 has a brain tumor. He had surgery. What is he going to do for
8 a living? He has constant seizures. He goes unconscious.
9 We're going to go to the Board, and what do we bring them as a
10 job? What do we bring them as resources when he's now sick and
11 not what he once was?

12 And so for us, we postponed because we're
13 terrified to walk in there because we don't know what to bring
14 them.

15 I think that the whole Parole Board system needs
16 to be changed. I think lifers should have the help that they
17 need to be able to plan for what's going to happen when they get
18 out, just like they do guys who parole. There should be a whole
19 lot of changes.

20 It's not personal, Ms. Perez. You're cute;
21 you're dynamic. You have a wonderful background, but I think
22 that CDC is just going to give you nothing but grief. They're
23 not going to give you the help that you need to fix it. And
24 that's what's needed here, is a big fix.

25 She's walking into somebody's messy backyard with
26 no tools, so I have to oppose this.

27 CHAIRMAN PERATA: Thank you, ma'am.

28 Okay. I wanted to ask you if you had anybody

1 from your family that you wanted to introduce?

2 MS. PEREZ: I do. I have my mother here, and I
3 also have what I refer to as my better half, Dan Stone,
4 somewhere in the audience.

5 CHAIRMAN PERATA: Welcome both.

6 Brief summary or just final closing statement?

7 MS. PEREZ: Yes, I thank you for this
8 opportunity, and I hope that you will vote to confirm.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 I want to indicate a couple of things. Much of
12 this was touched upon by the various speakers and other
13 Senators.

14 The lack of data, and Senator Romero has been
15 very direct about this, and I endorse what she has been
16 concerned about. It's very difficult to predict what we should
17 be doing in the future when we have no accurate data on
18 recidivism. We use a system that Senator Romero's been talking
19 about that cites a 60 percent figure, and yet it's impossible to
20 document that.

21 Also she has other issues, and I know you've been
22 dealing with her directly so I'm not going to tell I something
23 you already know.

24 What I will tell you is that if you're confirmed
25 by this panel, I will not take your confirmation up to the Floor
26 until Senator Romero has received what she's been asking for.
27 Your clock, and I do have a clock, runs from now until the 8th
28 of March.

1 To others who may be leaving who have spoken, I
2 want to tell you that the fact that the Governor has three more
3 appointments, and the fact that there is, as Mr. Gray has
4 pointed out and others of you have cited, a dire lack of real
5 diversity on this panel, it will be something that I will
6 personally talk to the Governor and his staff about.

7 I assume he will try to fill these three
8 vacancies during the next period of time, and, you know, I don't
9 want -- we color code things; we do this, we do that. The fact
10 of the matter is, we need a vertical cut out of this society,
11 you're absolutely correct, and I asked this question earlier of
12 staff, we're not getting that.

13 So, I will carry that message to the Governor for
14 you.

15 With that, do we have a motion? Senator Battin
16 moved.

17 Call the roll, please.

18 Oh, Senator Cedillo.

19 SENATOR CEDILLO: I would refer to the Chair, and
20 I know we talked about this earlier. I will defer to your
21 wisdom and judgment on this, particularly with respect to
22 holding this until these questions are answered.

23 But clearly, clearly, I'm concerned about two
24 points. One is this question of diversity. I have no objection
25 to representation from victim advocates. None whatsoever. And
26 no objection to representatives from the law enforcement
27 community. None whatsoever.

28 But there is some structural problem. It's not

1 one constructed by Governor Schwarzenegger in and of himself,
2 but there is something problematic when that is the exclusive
3 nature, exclusive nature of the Board.

4 So, there must be a strategy to deconstruct that,
5 to have a diversity that falls within the parameters of the
6 law.

7 I think that's the intent. I think the broader
8 scope in the intent is to have not just the diversity of
9 location, and economic, and nationality, and sex, but that the
10 product of that would be that there would be a diversity of
11 perspective of life experiences so that this would work the way
12 it's designed to work.

13 When they're exclusively in one employment
14 situation, and when they have almost by design one bias, the
15 industry has bias, the law enforcement industry, the victims
16 advocates industry, have a bias which is fine, which they
17 should. I don't object to that at all. But when that's the
18 exclusive nature of the Board, then it's inconsistent and
19 violates the spirit, if not the absolute letter, of the law.

20 So there has to be from you, as Chair of the
21 Board, a strategy designed to change that. That's one.

22 Two is that we heard from some of the witnesses,
23 this challenge that confronts us when we have 28,000 inmates who
24 may be foreign born, we need to know if they're citizens of our
25 country or citizens of another country. We need to know that.
26 And then there has to be more than four people out of those
27 28,000 who want to go back.

28 You indicated the problems and what they are.

1 Somebody can say, "No, we don't want to go back."

2 But we've heard from others, we've heard from
3 others that, if this is a matter of right, a matter of law, all
4 you have to do is ask them, then we cannot let our perspectives
5 and biases interfere with that, nor can we afford that.

6 And so, there has to be, and we want a report
7 that indicates a strategy and a timetable to figure out how many
8 people we have like that, and to line them up so that we know,
9 well, if there's 10,000 that say no, but there's another 18,000
10 that, if they want to go back, if they will be received, we
11 should then send them. So, we need some plan on that that gets
12 us there.

13 CHAIRMAN PERATA: Thank you.

14 Call the roll, please.

15 SECRETARY WEBB: Senator Ashburn.

16 SENATOR ASHBURN: Aye.

17 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

18 SENATOR BOWEN: Aye.

19 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Senator Battin.

22 SENATOR BATTIN: Aye.

23 SECRETARY WEBB: Battin Aye. Senator Perata.

24 CHAIRMAN PERATA: Aye.

25 SECRETARY WEBB: Perata Aye. Five to zero.

26 CHAIRMAN PERATA: Congratulations.

27 MS. PEREZ: Thank you.

28 CHAIRMAN PERATA: Okay, we have one final last,

1 but as they say, 'never least confirmation to the Board of Prison
2 Terms, Susan Fisher, and she is being presented by the esteemed
3 Senator Bill Morrow.

4 Senator Morrow.

5 SENATOR MORROW: Thank you, Mr. Chairman and
6 Members.

7 It is my honor and privilege to be here to
8 introduce to you and to recommend for confirmation Ms. Susan
9 Fisher to the position of commissioner for the State Board of
10 Prison Terms.

11 I want you to know that both on a personal as
12 well as a professional basis I have known Susan upwards of
13 probably going on 13 years, I think, since 1992. Like myself,
14 she hails from, she resides in the City of Oceanside, which does
15 make her a constituent, but more than that, I can tell you, she
16 is a long-time trusted friend, not only to me but to many others
17 in this building and throughout the state. She's been a
18 tremendous source, resource, valuable resource.

19 Her expertise, whether it be crime victims
20 issues, or correctional issues, frankly, is unsurpassed. She has
21 been a tremendous source, again, to many people, not just me, of
22 knowledge of state policies and procedures, laws, and issues.
23 And time and again I have sought her advice over the years, and
24 I know, again, many other people as well, too.

25 It may even surprise you that not always the
26 advice that she has given was what I was necessarily hoping for
27 or expected, but I can tell you it was always on the mark, and
28 it was always advice that I needed. It was always helpful.

1 Now, it's no secret that Susan, her introduction
2 and her interest in the area of criminal justice matters came as
3 a result of the loss of a close family member, in fact her
4 brother, some years ago in a murder case. And thus, yes, her
5 involvement in many crime victims issues, and numerous crime
6 victim organizations, including most notably the Doris Tate
7 Crime Victims Bureau, where for several years she has served or
8 had served as both a board member and a director.

9 But unlike at least some crime victim activists,
10 at least some that I have known, Susan is not in the least
11 shrill about her business. She has always -- while she has
12 definitely shown compassion to crime victims, I can tell you
13 that her compassion -- she is a very compassionate woman --
14 extends to all people in general.

15 She is very independent in her judgments, and I
16 have seen that over the years. In fact, over the years in her
17 own right, she has certainly become well known and a respected
18 figure in this Capitol.

19 Frankly, she needs no introduction by somebody
20 like me. But again, I'm privileged to be here.

21 I do want to point out that over the years, she
22 has demonstrated a keen ability to understand and to work with
23 Legislators as well as staff on both sides of the aisle, with
24 groups and individuals who might be groups who don't necessarily
25 agree with her views, or the views of her groups that she's been
26 with. Nevertheless, she has always been open and respected by
27 them as well, too.

28 What I'm telling you is that she is a very open

1 and fair-minded person to everyone. And her integrity is
2 virtually unassailable.

3 The fact that she is extremely well qualified for
4 this position, and that she will be a fair and just-minded
5 member of the State Board of Prison Terms, I think, has been
6 amply demonstrated in this last year, where she has served, of
7 course, in that capacity.

8 With that again, it's my privilege to introduce
9 to you and I give to you Susan Fisher.

10 CHAIRMAN PERATA: Thank you, Senator.

11 Welcome, Ms. Fisher.

12 MS. FISHER: Thank you. I will be very brief.

13 CHAIRMAN PERATA: Use our one good microphone.

14 MS. FISHER: I'm going to be very brief, since
15 Senator Morrow has already told you who I am, and just say
16 this.

17 When I accepted this appointment, I came to the
18 Board with the commitment to try to be as fair as I possibly
19 could, and also with the commitment that if I found that I
20 couldn't be fair, or that I was going into hearings with a bias,
21 that I would not keep the job.

22 What I didn't realize at the time was that I was
23 very wrong about who the life prisoners were. I really thought
24 I knew exactly who was in prison. I thought I knew that because
25 of the work that I'd done with victims. I thought that I knew
26 that because of the work that I'd done in the prior
27 administrations. And I believe that perhaps there were a few
28 people who might be suitable for parole, but I really thought

1 that overall, probably most lifers deserved to be in prison for
2 the rest of their lives.

3 And I found out very quickly that that wasn't
4 correct. In fact, I found that during the first week that I was
5 acting as a commissioner, and it may have been even been the
6 first day I gave two dates.

7 I learned very quickly that things are not black
8 and white. That there are certainly cases where I wonder who
9 the attorney, who the defense attorney was in certain cases. I
10 wonder sometimes when I look at first degree murderers why it
11 wasn't a second.

12 So, I think what I'm trying to say is that I know
13 that there was a lot of concern when I came on the Board. I
14 know that there's still concern about the fact that I was a
15 victims advocate.

16 But I simply haven't found myself to be -- to
17 feel, as I look at each case, that I need to have any kind of a
18 pre-judgment. I no longer look at life inmates simply based on
19 their commitment offense. And I think that prior to coming on
20 to the Board and gaining the experience that I've gained over
21 the last year, that was exactly how I looked at life inmates.

22 So, I'll leave it at that. If you have any
23 questions?

24 CHAIRMAN PERATA: Thank you.

25 If you'd like some of our water, that does work.

26 MS. FISHER: You'll notice how my hand shakes?

27 CHAIRMAN PERATA: Members, questions? Yes,
28 Senator Battin.

1 SENATOR BATTIN: Ms. Fisher, I received some
2 letters. I guess this is more of a statement than a question,
3 because you probably know your records as well as anybody, but I
4 received a lot of letters from people who oppose you, who over
5 and over again said you had never granted parole to anyone, and
6 that you came into the Board with the predisposition, and that
7 because you were with Doris Tate, that you've never even given a
8 fair shake.

9 I guess for the record here I just kind of wanted
10 to put this in. There are, of the six members of the Board that
11 we were given information on, of all your hearings, you have
12 granted 7 percent. Another commissioner has granted 7 percent;
13 one has granted 6; two have granted 3 percent; and Chair Perez
14 has granted 8 percent.

15 So, I would imagine you're probably kind of on
16 the high end of the parole. So, I wanted to put that into the
17 record and just let people know.

18 It's serious business when we are confirming
19 people to positions that the Governor has appointed. And if
20 they're going to have opposition, that's all well and good, and
21 everybody's entitled to it. But it would be great if they would
22 base it on accurate information.

23 So, I will be happy to move your confirmation. I
24 think that you've done an excellent job on the Board and look
25 forward to your continued service.

26 MS. FISHER: Thank you, and can I respond to that
27 just briefly, what you said.

28 SENATOR BATTIN: Certainly.

1 MS. FISHER: There are couple of things that
2 happened during the time immediately after I was appointed.
3 Some of the prisons that I went to, the inmates had prepared
4 scripts with which to object to me. Often I would overrule
5 their objection and tell them that I had no bias in their case.

6 And I had several inmates tell me at the end of
7 the hearing that I was nothing like what they expected me to be.
8 And in fact I had one inmate at Chuckawalla thank me and tell me
9 that no one had ever explained things to him in the same way
10 that I had.

11 I also have given grants at hearings where there
12 were victims there to speak in opposition to a finding of
13 suitability, and I was told that that's something that doesn't
14 happen very often.

15 So, I appreciate you bringing up those facts. I
16 am giving grants, and frankly, when you're able to grant a
17 parole date to an inmate who's done a really good job of
18 rehabilitating himself, it's a great feeling.

19 CHAIRMAN PERATA: Thank you.

20 Senator Cedillo.

21 SENATOR CEDILLO: I have no problems with you and
22 your history, and being part of the Doris Tate victims rights
23 organization. I applaud your leadership in that area.

24 But I am concerned that in terms of the role of
25 the Board members, the appropriateness of soliciting letters
26 against the actions for parole.

27 So, I'm wondering to what extent you engage in
28 that, to what extent there's protocols that exist?

1 As I said, I have no qualms with people being on
2 the Board bringing a certain perspective or a bias because I
3 think that's valuable. I think the problem when it's
4 exclusively that, it's problematic, but that's not your decision
5 or choice. That's a challenge for the leadership and for the
6 Governor, even though it wasn't a problem necessarily of his
7 making.

8 But is it appropriate, though, to solicit letters
9 when these matters come before you, solicit letters against the
10 candidate?

11 MS. FISHER: No, it would not be appropriate, nor
12 would I do it. I'm not sure --

13 SENATOR CEDILLO: There's assertions that you
14 engage in that activity. My questions are on the protocols of
15 your position.

16 MS. FISHER: No, it would certainly not be
17 appropriate.

18 The Doris Tate Crime Victims Bureau does by
19 history occasionally solicit letters of opposition to paroles.
20 It's not their major focus. There's another crime victims
21 groups called Citizens Against Homicide, and also Crime Victims
22 United. I believe all of them solicit letters in opposition to
23 parole, much in the same way that the inmates' families solicit
24 letters of support of parole.

25 But no, I would never solicit any letters of
26 opposition as a commissioner, no.

27 SENATOR ASHBURN: Mr. Chairman.

28 CHAIRMAN PERATA: Senator Ashburn.

1 SENATOR ASHBURN: An allegation has been made
2 that you prejudge cases. In other words, that you've already
3 filled out paperwork, that you've already made your decision,
4 and you've never heard the case.

5 Could you respond to that allegation.

6 MS. FISHER: Sure, absolutely.

7 And I did see that letter that said that I had
8 pre-decided a case and had filled out paperwork, and apparently
9 inadvertently handed the pink copy, which is the inmate copy, to
10 the wrong inmate.

11 In fact, what does happen occasionally is that
12 when we go to the institutions, we're given the week's worth of
13 paperwork to fill out in one form or another. It either comes
14 to us in a manila envelope that comes in the file, or it's on a
15 big clipboard, essentially, with a three-ring binder kind of
16 thing, and all the paperwork put on it.

17 Generally during the course of the week, there
18 will be changes in the schedule, and hearings will be postponed
19 or hearings will be moved forward. The schedule shifts. And
20 either the commissioner or the deputy commissioner, one of the
21 two of us, will be pulling paperwork and trying to make sure
22 that we're filling things out as quickly as we can as we try to
23 move through the day. And occasionally a mistake is made.

24 On the paperwork, and it's interesting, this was
25 an allegation that apparently came up at a confirmation hearing
26 a few years ago. There was the allegation that because some of
27 the things were typed in, that decisions were being prepared
28 ahead of time.

1 And in fact what happens is, the institution
2 types in what they -- what is static about the crime. And at
3 the bottom of the page, it has the inmate's name, his CDC
4 number, the institution, and the date.

5 And it has happened probably more than
6 occasionally that we have grabbed the wrong papers, filled them
7 out for the hearing that we were doing, and then realized that
8 we had made a mistake, that we had grabbed the wrong papers.

9 And I'm certain that that must be the source of
10 that allegation. As a matter of fact, there are certain
11 institutions where that's more likely to happen than others.
12 And I believe the allegation was made about CMC, and that is one
13 of the ones where it is sometimes a problem.

14 SENATOR ASHBURN: So that I understand your
15 answer completely, what you're saying is that you might fill out
16 paperwork in advance, but those items that would be indicated on
17 a form, they're not related to the information that would be
18 presented at the hearing.

19 MS. FISHER: Well --

20 SENATOR ASHBURN: They're more documentation
21 items.

22 MS. FISHER: Right, that's correct.

23 The only part that's not correct is that we would
24 not fill them out in advance. CDC, the institution, fills out
25 certain portions of the paperwork in advance, and then provides
26 them to us to fill in the portion that has to do with the grant
27 or denial, or anything that we would like to see the inmate
28 continue to do as far as programing.

1 What I'm saying is that sometimes we simply, in
2 the process of moving papers as quickly as we can, sometimes we
3 grab the wrong papers, and we fill them out, thinking that it's
4 for Mr. Smith, when it turns out that it's actually Mr. Jones
5 paperwork.

6 SENATOR ASHBURN: So it would be the wrong
7 inmate's paper, that's the allegation?

8 MS. FISHER: Right.

9 SENATOR ASHBURN: It's that they give wrong
10 inmates paperwork that they've filled out.

11 MS. FISHER: Exactly.

12 SENATOR ASHBURN: I see. Thank you.

13 CHAIRMAN PERATA: Senator Bowen.

14 SENATOR BOWEN: Just one question, actually.
15 Again, an allegation was made that the percentage of parole
16 grants changed between the time when we were in session and the
17 cases that were decided after that.

18 I, of course, have no way of knowing, so I'm
19 asking you.

20 MS. FISHER: Well, it's interesting, because I
21 didn't know what my percentage of parole grants was until we
22 were getting ready to do this. I hadn't been keeping track, so
23 to speak.

24 SENATOR BOWEN: I understand that. I don't keep
25 track of the number of bills I vote yes or no.

26 MS. FISHER: So, I don't know. I mean, I suppose
27 that it could have changed. What it could be related to is
28 where I was. Different institutions have different levels of

1 programming; they have different levels of inmates.

2 That would be my -- the only possible
3 explanation.

4 SENATOR BOWEN: Thank you.

5 CHAIRMAN PERATA: Thank you.

6 We'll now offer up the opportunity for those in
7 support.

8 Actually, you set a good standard, so come
9 forward.

10 We'll ask everybody not to be repetitive,
11 particularly of conditions that exist within the prisons and the
12 parole boards. We will all stipulate to that.

13 Keep your remarks confined to the nominee.

14 MS. AGUILERA-MARRERO: Thank you very much.
15 Again, Suzanna Aguilera-Marrero, the President for the Chicano
16 Correctional Workers Association, representing 2500-plus
17 members.

18 Ironically enough, I majored in business and
19 taught migrant education and worked with the developmentally
20 disabled before I came to work for Corrections, so I think that
21 the two candidates that have come before you probably also have
22 other life experiences, other than just law enforcement and that
23 of victims services.

24 I also serve on the Executive Board for Crime
25 Victims United of California, but I also answer appeals at the
26 Department of Corrections as a Correctional Counselor II
27 Specialist.

28 When you do deny an inmate, whatever it is that

1 you're denying him, you have to base it on some kind of Penal
2 Code, some kind of Title 15, which is our policies and
3 procedures, and our rules and regulations. You just don't
4 arbitrarily deny them what they have coming.

5 You take a look at their file, and every inmate
6 is going to be different from every other inmate, and that's
7 what has to be considered when you're looking at their case
8 factors before you make a decision.

9 Some inmates, you're right, they do everything,
10 but sometimes their crime is so heinous that you want to say, do
11 you want them to go home with you? No, you have to make a
12 decision that's based on public safety. And lots of times
13 you'll have inmates who will write, well, you don't have these
14 programs, or this is not being offered.

15 And I come from the school of thought that if you
16 really want to go out, then you've already come before Board of
17 Prison Terms, and they have made recommendations like become
18 disciplinary free, and stay disciplinary free. Well, that
19 should be an expectation because you're in prison, and that's a
20 structured environment. If you can't stay disciplinary free and
21 remain disciplinary free, then that also needs to be a factor
22 that needs to be considered.

23 They also make recommendations for them to go to
24 self-help, and sometimes they'll not be able to go the AA
25 meetings or the NA meetings before of their closed custody
26 because of their crime, and Classification dictates that they
27 can't go out maybe after 6:00 o'clock, but that doesn't mean
28 that they can't utilize other resources such as the library,

1 and obtain books so that they can go ahead teach themselves the
2 self-help skills that they need.

3 The same would be the case for anything that is a
4 recommendation to improve their academics.

5 CHAIRMAN PERATA: I'll interrupt you. I will
6 just end it there.

7 You're describing a different inmate population
8 than the ones I see return to the streets of Oakland. Most of
9 which you say they should be doing, they are not capable of
10 doing.

11 Let's just leave that there.

12 MS. AGUILAR-MARRERO: Okay.

13 Bottom line, the Chicano Correctional Workers
14 Association supports her appointment, and hopes that you endorse
15 her.

16 Thank you very much for your time.

17 MR. MABRY: Once again, Roy Mabry, Association of
18 Black Correctional Workers, 100 percent support.

19 And to you, young lady, congratulations.

20 MS. ROWLAND: My name is Judy Rowland. I started
21 in San Diego as a prosecutor and found that my real interest was
22 crime victims, violent crime. When I left, I founded an
23 organization, the California Center on Victimology, which was a
24 term in those days that nobody'd heard of.

25 I also was a lawyer, wanted to help crime victims
26 in the criminal cases. And in 1988, Susan Fisher walked through
27 our doors.

28 We often see crime victims who don't -- aren't

1 able to assimilate the crime into their lives. You don't get
2 over it, but you live with it.

3 And this, what you have here, Susan Fisher, is
4 someone who has not only done that, but she is a leader in life.
5 Whatever she does, she's going throw herself into.

6 In fact, I'm not even here today just to testify
7 for her. I saw the article in the L.A. Times last week that
8 roused my interest, and I've been away for about ten years. I'm
9 out of the loop, but I'm here actually in Sacramento to do
10 research for a class from -- as a member of the Unitarian
11 Universalist Church on Prison Reform. I said, "I'd like to
12 testify at your hearing." She didn't call me to do it.

13 But I felt that what you're getting here is a
14 leader in life that has taken what has happened to her and has
15 decided that she is going to do something, to give service back.
16 I am so proud of her. I'd like to think that I'd give something
17 if something as heinous had happened in my life, that I would
18 have responded as Susan does.

19 I am very proud of her, and I know you will be,
20 too.

21 Thank you.

22 SENATOR BATTIN: Thank you.

23 Next, any more support?

24 Opposition. Please, everything you went over
25 with Ms. Perez, you don't have to repeat it all.

26 MR. McQUILLION: Thank you, Senator. I won't
27 repeat myself. I'm Carl McQuillion, speaking against Susan
28 Fisher's appointment.

1 As a person who has studied the law extensively,
2 one of the principles of law is that any decision maker must be
3 fair and impartial. That's an absolute constitutional principle
4 that has been repeatedly stated by both state and federal
5 Supreme Courts and other courts in between, repeatedly. And
6 including the Ninth Circuit in Owens versus Mass, talking about
7 the Parole Board, saying that they must be fair and impartial.

8 It's an insult to that concept of fairness and
9 impartiality to appoint and to confirm the appointment to the
10 Board of the former Director of the Doris Tate Crime Victims
11 Bureau, whose sole agenda when it comes to life prisoners is to
12 block the paroles of everybody.

13 The fact that Ms. Fisher can vote occasionally in
14 a scant few cases of granting parole just simply points up the
15 problem that the Board is not functioning in a constitutional
16 manner. I don't believe that she has the capacity for being
17 fair and impartial, regardless of what she tells this Committee.

18 I do believe that in the aspects of -- other
19 aspect of her life, she is probably impeccable as a person of
20 integrity and ethics, and that she's got a fine moral character.

21 However, when it comes to being on that Parole
22 Board, I believe all of that goes out the window, and that she
23 is going to continue to uphold this no parole policy, and to
24 participate in it, as she has all ready done so.

25 The Parole Board's supposed to be granting parole
26 in most of the cases, not denying them in 98-99 percent of the
27 cases. This is what she participates; this is what she
28 endorses. She is an advocate, however you look at it, for the

1 Doris Tate Crime Victim Bureau and other crime victims
2 organizations. And that's the agenda she brings to the table,
3 and the agenda she is going to carry out.

4 Thank you.

5 SENATOR BATTIN: Thank you.

6 Turn your cell phones off, please.

7 DR. MILLER: Donald Miller. I won't repeat
8 myself either.

9 I also respect Ms. Fisher for what she's done in
10 the past.

11 I adamantly oppose her appointment. The things
12 that I talked to you about earlier, I talked to another earlier,
13 a couple of years ago, to a Senate Rules Committee. They said,
14 well, we'll just approve these, and then we'll talk to the
15 Governor.

16 And now you're doing the same thing. We've just
17 approved another policeman. Now we're going to approve another
18 crime victims advocate. And again, you're going to talk to the
19 Governor.

20 The responsibility for these appointments is not
21 on the Governor. It's equally on the Governor and the Senate.
22 That's what the statute says.

23 There is no way that that form could have
24 inadvertently been filled out the way it was if you understand
25 how these parole hearings operate, and you knew the sequence of
26 events that day. And it's not the first time that it's
27 happened.

28 Secondly, the percentage of paroles given out by

1 this candidate is irrelevant because it's the same as all the
2 other candidates. That's what she was trained to do when she
3 went on the Board, and that's exactly what she's doing.

4 Thirdly, a majority of those parole dates were
5 given out early, if you look at the statistics.

6 And finally, something that was brought up
7 earlier which affects all the commissioners, not just the
8 Chairperson, and I failed to answer it earlier. It's very
9 important.

10 The psychological reports, all of the
11 institutions have adequate facilities to provide them in a
12 timely manner. There's no shortage.

13 These inmates write to the Parole Board six
14 months before their hearing and say, "Please give us a
15 psychological evaluation so our hearing doesn't get postponed."
16 The Board writes back to the prisoner, either they ignore it, or
17 they say, well, we'll decide that at the hearing. Then they
18 come to the hearing, and the hearing is postponed, of course.

19 And two-thirds of the requests -- the inmates are
20 not requesting two-thirds of the time that their hearings be
21 postponed. They know that if the Board asks them to postpone it
22 and they disagree and go into the hearing, they're going to get
23 a multi-year denial as retaliation for doing that.

24 There are facilities for doing it, and nothing
25 has been done about it.

26 I respectfully oppose Ms. Fisher because again
27 it's a violation of the statute. Secondly, she has no
28 qualification or training in determining parole, like all of the

1 other Board members, and it's just a perpetuation of what's
2 going on. It's not going to solve anything. It's just going to
3 perpetuate it.

4 Thank you.

5 CHAIRMAN PERATA: Thank you.

6 Again, I'd ask you to be very pointed.

7 MS. BIRD: Thank you. I'll try not to repeat
8 myself.

9 CHAIRMAN PERATA: I won't let you.

10 [Laughter.]

11 MS. BIRD: I'm Cayenne Bird of the UNION, United
12 for No Injustice, Oppression or Neglect.

13 I'm sorry for the loss of your brother, Mr. Ruse,
14 truly. I know that's something that you never get over.

15 But you also never get over losing a loved one to
16 the system who may or may not have even been guilty.

17 We have a mentality these days --

18 CHAIRMAN PERATA: Ma'am, we've all got a pretty
19 good idea of what your philosophy is.

20 Just please confine your remarks --

21 MS. BIRD: Well, there's money being exchanged
22 between the Doris Tate Crime Victim Group. In fact, we have
23 always saw that it was the way that CCPOA Laundered donations to
24 various politicians and the Governor.

25 And I do want to say, this is just more cronyism.
26 And the union people are professional, brilliant people who have
27 organized, and we have churches, and we have labor unions, and
28 we have nursing associations. We're very large now. We've been

1 organizing for seven years.

2 We are not going to stand by and watch this
3 injustice continue, Senator Perata. We want fairness on this
4 Board of Prison Terms. And we don't think that Susan Fisher can
5 change her whole perspective, change her whole way of thinking
6 from being a punisher to a healer, you know, overnight. That
7 would be very difficult for anyone to do, and we wouldn't expect
8 her to be able to do that.

9 But the money, the cronyism, the donations behind
10 the scenes, I know about all that because I've been around here
11 for a while, and that still comes into question with her.

12 CHAIRMAN PERATA: Okay, thank you.

13 MR. CHANDLER: I'll be pretty brief here. My
14 name's Keith Chandler. I was released in June, after serving 21
15 years in prison, the last 8 of them illegally at the hands of
16 the Board of Prison Terms. The court order, the documents,
17 that's on record with the Committee.

18 The circumstances behind my parole rescission in
19 1995, which was ultimately ruled unconstitutional by the Federal
20 Court in Sacramento were predominantly caused by Carol Bentley,
21 who was a person confirmed by this Committee many years ago who
22 had a pretty strong victims rights advocates background, and
23 who sat before this Committee, and I believe in good faith, just
24 as Ms. Fisher is, told you she was going to be fair, that she
25 could do that. She had been on the Board for a while. She had
26 granted some paroles. Some Committee people were impressed with
27 that.

28 But if you continue to appoint victim rights

1 advocates to the Parole Board, you will continue to create
2 victims of what they do because, they can't overcome how they
3 feel. Certain cases are going to touch this woman, and she's
4 not going to be fair. It's part of who she is. I applaud who
5 she is. It's just part of her personal makeup.

6 That type of bias in some former Board members
7 cost me eight years of my life. It cost Carl McQuillion a
8 number more than that. Doc Miller the same.

9 When you put these people on the Board, you are
10 creating another class of victim, and I really just want
11 everybody on the Committee to hear that, and to look at a few of
12 us.

13 I don't know how I get that time back. My family
14 doesn't know. There's no explanation. And when a court just
15 says, "This is just blatantly unconstitutional," and "We're
16 sorry. Eight years are gone. Go home," it doesn't do anything
17 or solve anything.

18 The core problem is with appointing people like
19 Ms. Fisher, no matter how well intentioned she is. This has to
20 stop.

21 For that reason I oppose.

22 CHAIRMAN PERATA: Thank you.

23 MS. BLOOM: My name Toni Bloom. I'm here on
24 behalf of myself.

25 As an RN with the State of California, I've taken
26 a solemn oath to heal both mind, body and soul of human beings.
27 I am a daughter of a prisoner, and I understand that there are
28 victims, but there's also victims on our side.

1 People who are being denied parole repeatedly,
2 like the gentleman who was just here for eight years, the
3 families are also now being victims of somebody who is being
4 denied and denied and given no hope. There's just no
5 differentiation.

6 I don't believe that this lady is going to be
7 able to separate herself, and is not looking at the best
8 interests for the inmate and the family, and isn't looking for
9 rehabilitation and healing for the inmate and the families of
10 the inmate.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MS. BLOOM: Hello. My name is Beverly Bloom,
14 and I'm here to oppose the appointment of Susan Fisher.

15 She has been -- I wrote a letter. She has been
16 published with open contempt for inmates on various occasions,
17 which you received the a letter of those quotes in various
18 publications.

19 With that, I just don't think she can make an
20 objective decision. I respect what she's gone through, and I
21 just don't think you can completely disassociate and honestly
22 look at the circumstances and not bring your past with you. We
23 all carry it with us.

24 So, on that note, I'd just like to say I oppose
25 her position.

26 CHAIRMAN PERATA: Thank you.

27 MS. ROSS: Hello, Senator.

28 I would like to oppose Ms. Fisher as well. My

1 name is Joy Ross again.

2 Ms. Fisher has made many statements that were
3 very directly opposed to the job that she's doing. In 2000, she
4 thought that on their First Amendment rights, for them to have
5 access to the general public was outrageous. In 2002, on the
6 medical care, she said it's gotten out of control, what we feel
7 we are obligated to give prisoners. We are giving them care
8 that is not necessary to save their lives.

9 I know that for the gentleman that I'm involved
10 with, his -- he goes numb from the waist down for hours at a
11 time, and they tell him that's normal. He can't feel his left
12 foot most of the time. His leg is in severe pain. He gets
13 migraine headaches for hours and hours at a time, and they tell
14 him that it's normal.

15 The medical care that inmates get is definitely
16 below average.

17 Over the past four years, well, from '98 through
18 2000, over \$175,000 was given from the CCPOA to the Doris Tate
19 Foundation, of which she was on the board. I think that that
20 would be very difficult for her to overcome her biases and be
21 able to look at inmates as people rather than as the
22 perpetrators of crimes.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 MS. PAGLIASOTTI: My name is Jessica Pagliasotti.

26 And again, I just want to reiterate, as someone
27 who's worked in law enforcement, worked with victims advocates,
28 worked with victim witnesses, that in fact if the Board is

1 completely comprised of people with that background, it will be
2 a very biased view.

3 Thank you.

4 CHAIRMAN PERATA: Thank you.

5 MS. TUNSTALL: Here we are again. My name is
6 Mary Tunstall. I represent VCRC and Prison Reform Unity
7 Project.

8 As you know, I have a husband in prison.

9 I hate to say this, because it's like I'm a
10 generally very nice person, so I don't even want to look at her.
11 But I'm here to oppose.

12 I was very concerned because in doing research on
13 her, there was a lot of comments or quotes, direct quotes, in
14 the newspaper over the last five years that they said she had
15 said. And one of them was that inmates did not deserve medical
16 care.

17 That one struck right to my heart because, as
18 I've shared with you guys, my husband had a massive brain
19 tumor.

20 So, I guess that's all I'm going to say on this
21 one because I just oppose.

22 CHAIRMAN PERATA: Thank you.

23 MR. GRAY: Mr. Chairman and Members, I'm Matt
24 Gray with Capital Alliance, here on behalf of client Voters
25 Corrections Reform Coalition.

26 We do oppose Ms. Fisher's appointment to
27 confirmation to the Board. We entirely support a person's First
28 Amendment rights, their ability to say what they believe

1 adamantly however they see fit.

2 We do not believe that a person takes such a
3 strong position and then suddenly changes because of a job
4 unless there's some sort of personal growth and transformation
5 to cause them to do that, something very meaningful in their own
6 own life. And we don't think that a simple job does that.

7 If you look at the statistics that Senator Battin
8 put forth, she has issued a number of parole dates. If you look
9 at all of the statistics on that very sheet, if you look at the
10 four-year denials, and those four-year denials are the maximum
11 that can be given to an inmate without the right to an appeal,
12 she is among the highest of all of her colleagues. And the
13 four-year denials happen to coincide with the presence of
14 victims rights advocates at the hearings.

15 SENATOR BATTIN: Actually, she's one of the
16 lowest.

17 MR. GRAY: Senator Battin, respectfully, if you
18 look --

19 SENATOR BATTIN: Parole denied, four years, she
20 has granted 39.

21 MR. GRAY: Out of 455, which is 8.6 percent.

22 SENATOR BATTIN: Commissioner Lawin has done 221.

23 MR. GRAY: Which is 7.6 percent.

24 SENATOR BATTIN: Angele, 203.

25 MR. GRAY: Which is 7.5 percent.

26 SENATOR BATTIN: So, .7 percent, is that what
27 we're talking about?

28 MR. GRAY: She is among the highest of her

1 colleagues, that's correct. If you look at Ms. Perez, 2.4
2 percent.

3 Okay, but the correlation I'm making is, the
4 difference there was that these inmates who had been showing up
5 for six or seven years before the Board and consistently been
6 receiving one-year denials, who had remained disciplinary free,
7 but then appeared before Ms. Fisher with the presence of victims
8 rights organization members, suddenly they received four-year
9 denials.

10 And my position here on behalf of the VCRC is
11 that Ms. Fisher has not quite made that transformation that is
12 appropriate for a commissioner to make.

13 Personally, I am the victim of a shooting, where
14 I watched my step-mother die in front of me. My father is in
15 prison.

16 And I say, if you're going to keep people there
17 because of the presence of victims rights organization members
18 at hearings, please don't do it in my name.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 Okay, before we go any further, do you have any
22 family?

23 MS. FISHER: No, I don't.

24 CHAIRMAN PERATA: Just a couple comments before
25 we call the roll.

26 I think that a lot of what has been said here,
27 and I'm glad for the Board, and this has gone on a lot longer
28 than I'm sure most have in the past. But we are all new, and

1 this is a brand-new process to us. And all of your faces, while
2 maybe well known to some, are brand-new to us.

3 One thing has struck me, that the demand for data
4 that Senator Romero and other people are asking for, is even
5 more apparent to me now than it has been. We have some raw
6 statistics here. It's shameful that we're talking about
7 percentages when we're really talking about people's lives.

8 And I also want to point out -- so, I just want
9 to underscore, Ms. Perez, the importance of providing that
10 information to Senator Romero.

11 I also want to point out that there's a little
12 irony here, and I'd ask you all to think about this, is that you
13 don't believe that Ms. Fisher can disassociate herself from the
14 past, yet that's what you're asking her to do, is to
15 disassociate someone else's past, their commitment crime, to
16 their life subsequently in jail.

17 And I don't know when personal growth takes
18 place. I'm waiting for mine. And I don't think most of us are
19 ever going to get Paulian-like conversion where we get knocked
20 off of our horse, whether you believe it happened in fact or
21 not.

22 But I do believe that all of us have to have the
23 capacity for accepting that maybe the job doesn't change you,
24 but experiences do.

25 I appreciate the candor with which you said what
26 you did about the way you now view lifers. It's a lot easier in
27 the cheap seats, and I've learned that from my own experience.

28 But what I would like to just close on is that it

1 has not been lost on any of us that there is some real question
2 about our willingness and ability to follow the law with regard
3 to the composition of this Board. And again, I will personally
4 communicate that to the Governor, but I'm sure all of us will
5 talk to one another. The next set of Board members that are
6 presented to us is going to have to pass a much different
7 standard than the two today, and that's not to say anything
8 untoward or derogatory.

9 I would also ask each of you, as you finish
10 through the process, to become advocates for some of the things
11 that you've heard here today. You speak with a much different
12 voice now. In some ways, you're going to be liberated now
13 because you don't have a one-year cloud hanging over your head.

14 You know, horses revert to form, and human beings
15 sometimes do the same when they're not being cited. The Highway
16 Patrol Commissioner saying, if a black-and-white's out there, it
17 has a different effect on driving conduct. But there'll be no
18 black-and-white watching you, and you're basically both free to
19 interpret as you will.

20 But it's a very important position. There are
21 only, you're now one of six. Hopefully, one of these days,
22 we'll have a full complement of nine.

23 And I also want to recognize that I am fully
24 aware of the fact that a governor my own party might have been
25 the most egregious of all in terms of the severity of the way he
26 viewed parole and forgiveness and rehabilitation. So, I'm not
27 singling out this Governor at all. In fact, I have some hope
28 that maybe he'll do a better job in this regard.

1 So with that, I'd like to ask the roll to be
2 called for confirmation.

3 SENATOR CEDILLO: Just let me say this for the
4 record.

5 I do not see him there, but Randal Hernandez was
6 here earlier. He's leaving his position as Appointments
7 Secretary for the Governor. I found him to be quite accessible
8 and available, with a firm commitment to making sure that the
9 appointments were reflective of the State of California.

10 So, I just bid him farewell and good wishes.

11 CHAIRMAN PERATA: I was not aware of that, thank
12 you.

13 SENATOR CEDILLO: Again, I just attach myself to
14 your comments on the need for there to be diversity,
15 substantive, meaningful diversity on this Board.

16 SENATOR BOWEN: May I request that before we take
17 up these nominations on the Floor, that we have the plan for
18 dealing with the Battered Woman Syndrome experts.

19 CHAIRMAN PERATA: Yes, that's something you both
20 can work on.

21 Please call the roll.

22 SECRETARY WEBB: Senator Ashburn.

23 SENATOR ASHBURN: Aye.

24 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

25 SENATOR BOWEN: Aye.

26 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

27 SENATOR CEDILLO: Aye.

28 SECRETARY WEBB: Cedillo Aye. Senator Battin.

1 SENATOR BATTIN: Aye.

2 SECRETARY WEBB: Battin Aye. Senator Perata.

3 CHAIRMAN PERATA: Aye.

4 SECRETARY WEBB: Perata Aye. Five to zero.

5 CHAIRMAN PERATA: Congratulations.

6 MS. FISHER: Thank you.

7 [Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately
10 5:35 P.M.]

11 --ooOoo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

1st day of February, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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Short and Long Term Goals

Upon his appointment, Commissioner Brown met with the CHP's Top Management team (the 17 Deputy Chiefs who help administer the day-to-day operations of the organization). His charge was simple – help him run the organization like any successful business.

In order to achieve this goal, they first looked at the mission of the CHP and how it related to the Governor's vision and that of the CHP's parent agency – Business, Transportation and Housing. CHP managers then refined the mission to reflect the Department's core obligations to the public – which unanimously focused on “field-related” services. The statement now reads:

“The mission of the California Highway Patrol is to provide the highest level of safety, service, and security to the people of California.”

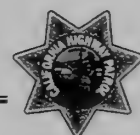
In order to accomplish this mission, a new strategic planning process was developed. Modeled after successful plans of other state law enforcement agencies, the CHP's outlook and goals for the current year are:

- Prevent Loss of Life, Injuries, and Property Damage

- Maximize Service to the Public and Assistance to Allied Agencies
- Manage traffic and Emergency Incidents
- Protect Public and State Assets
- Improve Departmental Efficiency

As indicated in Figure 1, the CHP's strategic goals now, and for the first time, specifically facilitate the Administration's vision for California, while at the same time focusing daily operational efforts on maximizing the use of critical field assets.

Figure 1
Dovetailing of Governor's Strategic Framework with CHP's Strategic Plan



CHP Mission

The CHP sets out to accomplish its mission of safety, security, and service through five departmental goals:

- Prevent Loss of Life, Injuries, and Property Damage
- Maximize Service to the Public and Assistance to Allied Agencies
- Manage Traffic and Emergency Incidents
- Protect Public and State Assets
- Improve Departmental Efficiency

CHP Goals and Strategies

The CHP's Strategic Plan is based on efforts to achieve five departmental goals that are connected to the Department's mission and to the overarching vision of Governor Schwarzenegger and the Administration. The CHP goals and strategies are:

Goal: Prevent Loss of Life, Injuries, and Property Damage – To minimize the loss of life, personal injury, and property damage resulting from traffic collisions through enforcement, education, and engineering. To enforce the provisions of the California Vehicle Code, and other laws to prevent crime.

Three long-range strategies have been incorporated into the plan to help accomplish this goal. They are:

1. Reduce statewide fatal and injury collisions by five percent as compared to the prior three-year average (short and long term components).
2. Reduce statewide deaths resulting from speed, DUI, and occupant restraint violations by five percent as compared to the prior three-year average (short and long term components).
3. Enforce the law (short and long term components).

These strategies were chosen because they focus on the top causes of injuries and fatalities in CHP jurisdictions. Ongoing trend analyses and discussions with CHP's Top Management will further define these strategies and help in setting short term goals.

Goal: Maximize Service to the Public and Assistance to Allied Agencies – To maximize service to the public in need of aid or information, and to assist other public agencies when appropriate.

Three strategies that include short and long range components support this goal. They are:

4. Reduce the time to complete property damage and injury collision reports from 10 days to 8 (short term strategy).
5. Reduce response times to calls (long term strategy).



6. Increase the number of certified Multidisciplinary Accident Investigation Teams (MAIT) by 50 percent, and provide additional training during 2005. The CHP currently has four MAIT teams consisting of certified advanced collision investigators. Their investigative abilities and equipment far exceed those of regular road patrol officers (short term strategy).

These strategies were chosen because they are clear and tangible examples of improved service to CHP customers. As stated in the BTH "Vision for California Future," the CHP finds that enhancements in these service elements will help provide "[G]overnment that is efficient and accountable – focused on outcomes and productivity."

Goal: Manage Traffic and Emergency Incidents – To promote the safe and efficient movement of people and goods throughout California, and to minimize exposure of the public to unsafe conditions resulting from emergency incidents and highway impediments.

Four strategies have been incorporated into the plan to help accomplish this goal. They are:

7. Increase deployment of systems to enhance radio interoperability during 2005 (short term strategy).

8. Reduce time required to clear property damage collisions blocking roadways (short and long term components).

9. Increase by five percent the number of public affairs presentations on the subject of moving minor collisions off the roadway (short term strategy).

10. Develop a statewide program to rapidly clear collisions and roadway impediments during the first six months of 2005 (short term strategy).

These strategies were chosen because of their historically proven effectiveness in clearing roadway hazards and congestion-causing incidents. Additionally, an added strategy focusing on interoperability was added to help strengthen communication capabilities between the CHP and local, state, and federal emergency service agencies that all help to clear incidents and keep traffic moving.

Goal: Protect Public and State Assets – To protect the public, their property, state employees, and the state's infrastructure. To collaborate with local, state, and federal public safety agencies to protect California.

Three strategies have been incorporated into the plan to help accomplish this goal. They are:

11. Enhance the safety of state employees and dignitaries, and the security of state facilities, through the CHP's Safety Services Program (short and long term components).

12. Evaluate the Department's homeland security program during 2005 (short term strategy).

13. Enhance commercial vehicle security, and reduce statewide commercial driver-at-fault collisions by five percent as



compared to the prior three-year average (short and long term components).

14. Reduce the statewide auto theft rate by five percent as compared to the prior three-year average (short and long term components).

These strategies were chosen to enhance two of the CHP's more important statutory roles – protecting state employees and dignitaries, and protecting state facilities. Also, since the September 11th terrorist attacks, the Department has worked hard to facilitate a cooperative environment among state and local agencies dedicated to homeland security. The strategic focus in this plan will help maintain a cohesive, cooperative environment among the CHP and those other agencies.

Goal: Improve Departmental Efficiency – To continuously look for ways to increase the efficiency and/or effectiveness of departmental operations.

Two strategies are part of the plan to help accomplish this goal. They are:

15. Implement the internal recommendations from the CHP's Workers' Compensation Report during 2005 (short and long term components).

16. Enhance fiscal management of departmental operations by greater involvement of all levels of management, to ensure efficient operations and cost-effective government (short term).

These strategies were chosen because of the discovery of a workers'

compensation system in need of modification and the need to find ways to more efficiently and effectively manage financial resources in times of fiscal austerity.

Initial Achievements

A more business-like approach to government services, with an eye on "customer service" is a driving force behind our efforts to make government "performance driven." In response, the CHP is now looking at its individual programs and operations and developing performance measures to determine how effective they are at completing their stated mission.

Since being appointed in September 2004, Commissioner Brown has embarked on a number of initiatives, including:

- Creating a permanent Workers' Compensation Fraud Unit.
- Preparation of a detailed report on Workers' Compensation reform with recommendations for improving the system.
- Streamlining CHP Headquarters' staff operations, eliminating divisions created in recent years that drew staffing from field offices.
- Shifting additional uniformed personnel from staff to field operations.



A Personal Vision

"I am humbled to have been appointed Commissioner of the California Highway Patrol by Governor Schwarzenegger. As I've discussed with him, my vision for this department is basically quite simple: I plan to focus our efforts on 'field-related' services, meaning that all we do, every dollar we spend, and every penny we save will go toward putting more officers on the streets we patrol. To accomplish this, a comprehensive plan must be developed and made part of each employee's daily tasks.

"My top managers and I have already developed and implemented a new Strategic Plan. Like any successful business, we will use this plan to help take advantage of new opportunities and to successfully meet new challenges. Using the plan as a guide, we will take a fresh look at downsizing our upper echelons, redistributing administrative officer positions, and eliminating wasteful spending. This is an especially important element to me, particularly costs associated with workers' compensation claims. Efforts to reign in workers' compensation costs have already begun, costs that ultimately could pay for additional road patrol officers.

"Our response to the public must remain a model to the nation's law enforcement community. Passion for and commitment to timely service must be in the heart of every CHP employee — whether you call us on the phone, visit our offices, or cry for help. Each of us who wears the CHP badge must reaffirm our oath and duty to save lives and help make California the safest state in the nation.



"We recently demonstrated our unique ability to improve traffic safety during the two-week "Operation Holiday Wish List" campaign. During this campaign, 63 fewer lives were lost than during the same period last year. I know we can lower the number of traffic injuries and fatalities even further through enhanced traffic safety education, publicity, and when necessary, focused enforcement. To do this, we will train our traffic safety efforts on speeding, driving under the influence, and occupant restraint violations.

"Security of our State, its employees, elected officials, and valuable assets will also be at the forefront of our operations. Whether they involve combating drug runners, terrorists, or child abductors, criminals will know our highways will not be a safe haven for their felonious conduct.

"My vision ultimately preserves and builds upon the reputation for which 202 of my colleagues sacrificed their lives. Together with over 10,000 dedicated employees, my pledge is to mold the California Highway Patrol into a model of effectiveness and efficiency — a symbol of safety, service, and security."

— Commissioner M. L. Brown





Patrick W. Henning
Director

Arnold Schwarzenegger
Governor

January 14, 2005

The Honorable Don Perata
President pro Tempore
Chair, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

Thanks for the opportunity to provide my responses to several important questions that you recently raised in preparation of the January 26, 2005, confirmation hearing on my recent appointment as Director of California's Employment Development Department (EDD).

I have always recognized the immense importance and value that EDD's programs provide to both businesses and workers throughout the state. It is a privilege and challenge to oversee the administration of several multi-billion dollar programs that support the economic well-being of all Californians.

I look forward to the confirmation hearing and having the opportunity to further discuss the important questions that you have raised, as follows:

1. What do you hope to accomplish during your tenure as Director of the EDD? What goals do you have for the Department and how will you accomplish them?

Simply stated, my goals are to provide quality and cost-effective services to businesses, organizations, and workers seeking employment and training services, make it easier for businesses to conduct business with EDD, and ensure that the EDD team has the tools and resources necessary to perform our important mission. Since being appointed, I have identified four priority areas I intend to immediately address as Director of EDD. These present a tremendous opportunity to position EDD to meet current and future demands of businesses and persons seeking our services. Furthermore, all four initiatives will serve as the vehicle for achieving my goals. Although I am discussing these four priorities separately, they are very much interdependent.

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Four priorities that I intend to address immediately are:

- aggressively exhibiting to all parties the many services and programs of EDD;
- pursuing and securing additional federal funds;
- increasing the skills and capacity of a diversified EDD workforce to enhance service delivery to all parties; and
- modernizing our information technology systems.

First, I plan to use my energy to aggressively better exhibit to business, labor, and community organizations, the many services and programs of EDD in an effort to make our state's employers, employees, and job seekers more competitive and successful in our global economy.

From Sacramento to cities and towns large and small, I want to take our message of partnership to further heights: from providing assistance to employers on tax compliance, to real opportunities linking our job service functions with workforce development programs, to learning more about the impact of the paid family leave program on workers and employers. I want as many as possible, to learn the "face" of this great department. It's time for EDD to be more pro-active in our efforts to serve Californians.

Second, I intend to work with our state's Secretary of Labor to advocate for and secure additional federal funding that is needed to provide services to our customers. Many of our major programs such as the unemployment insurance, job service, and Workforce Investment Act programs are financed with federal funds. All of these programs have had an increased demand for services in recent years, yet we have had a significant reduction in our federal grants.

For example, in the five years that the federal Workforce Investment Act program has been in existence, California's funding for this program has been reduced by 28 percent. I will work with the Administration to rigorously pursue our fair share of federal funds. Furthermore, I will work with other state agencies and our public/private partners in an effort to jointly pursue additional federal funds or grants.

Third, I intend to increase the skill and expertise of EDD's workforce. In the coming years, the technology that we use and the way we deliver our services will change. EDD staff will need to develop new skills in order to provide services, using these advanced technologies, applications, and service delivery systems.

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Furthermore, approximately one-third of EDD's workforce will retire from state service over the next five-plus years! A real challenge, indeed. Over the next year, I will work to establish a succession plan that helps train our workers to be effective program administrators in the years to come.

Finally, my last priority is to bring EDD's Information Technology systems that provide customer services into the 21st Century. My response to question number three also discusses this priority in more detail. As with most large state agencies – technology plays an important role in our service delivery systems. Toward this end, I will work to modernize and expand our technology systems so that EDD staff can be more responsive to customer demands, and provide more effective and timely service delivery to our large and diverse customer base.

- 2. California's Unemployment Insurance Fund is on the brink of insolvency. The most recent forecast estimates a \$132.3 million fund balance by the end of 2005 and a deficit of \$93.5 million by the end of 2006. As EDD Director, what role will you play in attempting to resolve this crisis? What, in your view, are the key elements of a sound financing system for the unemployment insurance program?**

California's Unemployment Insurance (UI) program is funded by employer-paid contributions (i.e., taxes) that are used to pay benefits to eligible workers during periods of unemployment.

The UI program performs two very important functions. First, the program provides an income replacement to eligible workers allowing them to purchase basic necessities while seeking gainful employment. Second, the UI program helps stimulate local economies as program recipients purchase consumer goods and services in their local communities. The importance and value of the UI program to workers, businesses, and local communities cannot be understated. I recognize the importance of ensuring this benefit program has sufficient funding to perform its intended functions, both timely and effectively.

As Director of EDD, I have two primary roles in helping to address the UI fund solvency issue.

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First, as the principal administrator over the UI program, my role is to ensure that the EDD provides accurate and impartial data and cost estimates to the Administration, the Legislature, and other stakeholders involved in policy discussions for addressing the solvency problem. I am strongly committed to ensuring that policy-makers have the data and knowledge to make informed decisions about this very important issue.

Secondly, my role is to identify and present financing options for consideration by all the program's stakeholders. This entails a responsibility to ensure that all parties to the discussion are educated and aware of the implications to both businesses and workers of these various options. I am committed to assisting our Secretary of Labor in her discussions with the program's stakeholders to help reach consensus on a fair and equitable solution to resolve this funding problem.

You have also asked what I view as the key elements to establishing a sound financing system for the UI program.

Establishing a sound financing system is dependent upon several principles. These principles include maintaining an adequate reserve, ensuring an equitable distribution of revenue costs among industries, and striking a balance between benefit levels, eligibility requirements, and revenue.

First, a sound financing system must be responsive to various economic conditions. This requires an adequate reserve that enables the UI program to meet its benefit payment obligations during periods of high unemployment. An adequate reserve is based, in part, on designing a revenue structure that enables sufficient funds to be collected to respond timely to varying economic conditions.

Second, a sound financing system should relate employer liabilities to the amount of benefits received by their workforce. Industries with a less stable workforce, may not contribute a proportional share of revenue to the UI system when compared to the amount of benefits collected by their labor force. A sound financing system should achieve a balance between revenue collected and benefits paid, while at the same time understanding the unique characteristics of various industries.

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Third, a sound financing system must take into consideration the interrelationship of four variables:

- the taxable wage ceiling,
- maximum tax rates,
- eligibility provisions, and
- benefit provisions

Discussions with the stakeholders – on who collects benefits, how much someone collects, and the distribution of the tax burden, must be viewed as a total system in order to design a viable and sound financing system for the UI program. The stakeholders must also consider current and future changes to the system when discussing alternatives that would be part of the financing system redesign.

Finally, the EDD continues to work with the U.S. Department of Labor (DOL) to develop sound modeling systems to accurately project proposed changes in California's UI financing structure. This is a critical factor for ensuring that proposed solutions will achieve their intended goals. The U.S. DOL has been an active partner by reprogramming this model to assist us with creating accurate forecasts.

3. Are EDD's current IT systems as technologically efficient as they might be? How do they allow EDD to operate benefit payment and tax accounting systems that provide prompt, reliable, and efficient services?

The EDD relies on several large computer systems that were designed using mainframe computer platforms, including hardware and software that reflect the technology standards and workflow processes of the 1980s. These systems no longer have the capability to fully provide prompt and efficient services.

For example, EDD's primary tax and benefit information technology systems require significant improvements to be as efficient as they should be and offer business solutions that are faster, more accessible, efficient and flexible, and less costly to maintain. Both systems are approximately 20 years old and lack the flexibility to easily and quickly be upgraded or modified to meet new legislative mandates, programmatic changes, or enhance services for our customers.

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Additionally, maintaining these systems is very labor intensive and requires staff knowledgeable in a computer language, which is over 40 years old. This requires significant specialized technology staff resources even for minor changes to our systems. In addition, the number of Department programmers proficient in this language continues to decline as these staff retire and more modern computer languages become the industry standard.

A substantial investment has been made over the years to keep these benefit payment and tax collection systems operational, and on a positive note, have offered a fairly reliable solution for over 20 years, and are credited with paying over \$10 billion in UI and disability insurance benefits, and collecting \$35 billion in various tax revenues during state fiscal year 2003-04.

Additionally, we have made technology investments to address new federal and state legislative mandates and to implement business process improvements. As you may be aware, there is currently a major initiative underway to modernize the UI claim filing and benefit payment processes. This initiative has been financed with legislative approval using available federal Reed Act funds.

The EDD has also completed studies which have identified other opportunities to streamline business processes and leverage technology to provide better customer service for the Disability Insurance program and tax collection functions performed by EDD.

It is my goal to dedicate the necessary resources and provide the executive leadership to implement new information technology initiatives that will enable EDD to become more technologically efficient and effective, as well as better equip our staff to assist individuals seeking our services.

- 4. Unemployment claim fraud has been on the increase in recent years. How do you account for this increase and what are your plans to ensure that the department employs effective fraud control measures?**

Most recently, the increase in UI fraud is attributable to identity theft. I became acutely aware of identity theft and its implications to the UI program during legislative hearings in 2002. Over the past several years, identity theft has risen across the country, including California.

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Identity theft involves obtaining and unlawfully using personally identifying information, can include theft of wage and employment information, as well as credit card, bank, and other personal information. The impact of identity theft in EDD's programs is an increase in the number of individuals who engage in imposter fraud. Imposter fraud occurs when someone steals the identity and wage credits of a legitimate worker and uses this information to file a fraudulent UI claim.

The EDD has seen UI imposter fraud occurring in different patterns and larger volumes over the last few years. Imposter fraud typically begins with the theft of records, such as personnel records, that contain employees' identity and earnings information. As Director, I will ensure the EDD responds to imposter fraud through an aggressive investigation process.

Funding priorities will be set to continue the following successful interventions.

Implementation of the Identity (ID) Alert Process - The ID Alert process was developed to minimize imposter cases by preventing payment on new claims, stopping payment on existing claims, and ensuring proper charges to employers' reserve accounts. If EDD receives information that a Social Security Number (SSN) may be compromised, EDD staff immediately flag that SSN and a request for identity information is mailed to the individual, and his or her most recent employer(s) when a claim is filed under that number.

The EDD has also instituted a more extensive identity-screening process that is used when individuals file for UI benefits. During the screening process, if EDD staff have questions or concerns about the identity of the individual filing the claim, then an ID Alert process is initiated.

To ensure the proper payment of benefits, EDD investigates the identity issue based on the information received from the aforementioned parties; as well as data from available cross match processes with the Department of Motor Vehicles, Franchise Tax Board, the Social Security Administration, and the EDD's internal database. Payment on new claims is not issued and current payments on existing claims are stopped until the identity issue is resolved. The ID Alert process is credited with saving between \$55 million and \$197 million to the UI program by stopping imposter claims.

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Implementation of the Social Security Number (SSN) Verification System -

This system cross matches claim data with data from the Social Security Administration; namely, the claimant's name, SSN, and date of birth. If an SSN is not verified by the Social Security Administration, it is considered potentially compromised and included in the ID Alert process for further investigation. The EDD has also discontinued printing the SSN on UI benefit checks issued to claimants to minimize the potential for SSN being comprised.

EDD has always implemented various measures to combat UI fraud. Many of these measures are also used to help prevent imposter fraud. Some of these measures include: using a Personal Identification Number system to protect claimant's confidential information available by telephone; conducting benefit audits when an employer reports wages paid to a claimant during the same period the claimant receives benefits; conducting an internal database cross match that uses existing records to confirm the claimant's identity; conducting a public fraud educational campaign, and publishing a fraud hotline number that employers and the general public can use to report suspected cases of fraud.

We at EDD are currently working on four new major automation initiatives that further enhance fraud prevention and detection activities. As Director, I will be working diligently with our executive team to ensure these initiatives are implemented successfully, and without undue delays.

I look forward to working with the Legislature to ensure our programs and services continue to meet the expectations of the people of California.

Respectfully submitted,



PATRICK W. HENNING
Director

cc: Ms. Nettie Sabelhaus

Senate Rules Committee
Responses to questions to Margarita E. Perez, Chair
Board of Prison Terms

1. What are your goals as Chairperson of the Board of Prison Terms? What do you hope to accomplish during your tenure?

As the Chair of the Board, I have set a variety of goals and objectives for the organization which take into account our mission to uphold the due process rights of offenders, while maintaining public safety. It is important to note that these goals and objectives maintain the theme and overarching correctional strategy of the Youth and Adult Correctional Agency (YACA), by upholding the values of integrity, accountability, transparency, and efficiency. The Board of Prison Terms (BPT) values its role as the state's paroling authority, and through my leadership, we are committed to ensuring that the laws, rules, and regulations currently in place are adequate for us to carry out our mission.

As such, I have set five primary goals, and they are as follows:

1) To fully implement the requirements pursuant to the Valdivia Permanent Court Injunction relative to the parole revocation process.

As evidenced by the Valdivia Court Injunction, this organization has historically not upheld the due process rights of offenders as outlined in the U.S. Supreme Court decision of *Morrissey v Brewer*, and related case law. One of my main objectives is to ensure that, in collaboration with the California Department of Corrections (CDC) and YACA, we develop and maintain a parole revocation system that takes into account fairness, due process and the principles of human compassion and dignity into our decision making process.

As the Chair I have focused my attention on making personnel and administrative changes within the organization that support this philosophy and which diminish the outdated mentality that our goal is to return parolees to custody as the only method to maintain public safety. As a subset of this goal, I shall continue to emphasize the need to consider alternative sanctions to address the barriers which contribute to the recidivism rate of offenders and the long-term safety concerns of the community. Returning a parolee to custody maintains public safety, but only while he/she is incarcerated. Unless underlying issues that contributed to their failure on parole are addressed, parolees are bound to continue to recidivate, with little hope of rehabilitation. The resourceful use of remedial sanctions when the Board determines it is appropriate, as opposed to returning an offender to custody, is a constructive way to manage those offenders who are amenable to rehabilitation. It is through staff training, monitoring systems and the judicious use of oversight and regulations that we will promote a balanced approach in parole revocation decisions.

2) *To identify and correct shortfalls and inefficiencies in our current Battered Woman Syndrome investigative process, and hearing processes involving inmates and parolees, i.e., lifers, sexually violent predators, mentally disordered offenders, parole violators, etc.*

This will entail a thorough "top to bottom" evaluation of the Battered Woman Syndrome investigation process and the hearing processes currently in place. In addition, it is crucial that the rules, regulations, laws and policies and procedures currently in place are not in conflict with each other, and reflect that which is necessary for the Board to carry out its mission. As such, it is my goal to garner the resources and personnel necessary to conduct a thorough analysis of these processes, with the objective of identifying those impediments that contribute to inefficiencies and waste in the current systems. In addressing and correcting these shortfalls, we will enhance our effectiveness, decrease the potential for litigation, and most importantly, enable us to uphold the due process rights of offenders.

3) *To identify and address those issues which contribute to the Lifer backlog, and reduce the backlog to a level that is within the control of the BPT, CDC and YACA.*

There are a number of issues that continue to contribute to the Lifer backlog. In addressing those factors that are within the control of the Agency, we are in the process of collaborating with the CDC on the identification of issues that contribute to this backlog, including outdated psychological reports that result in unnecessary continuances.

It is also significant to note that the Governor's reorganization plan, recently submitted to the Little Hoover Commission, provides for a 17-member Board of Parole Hearings (BPH). The BPH would consist of a consolidation of Commissioners/Members from the BPT, the Narcotic Addict Evaluation Authority, and the Youth Authority Board. A complement of 17 members would provide the flexibility to strategically deploy its resources wherever the need is the greatest.

4) *To enhance employee professionalism and accountability via the hiring and training process, measurement tools, and the enforcement of standards.*

During my tenure, it is my objective to establish and maintain an efficient, effective and a just parole revocation and life parole consideration process. This cannot be accomplished simply by putting an "efficient process" in place. We must focus our efforts on recruiting, hiring and training a diversified workforce of employees with the sophistication, skills, and balance necessary to make valid and sound decisions. The establishment of this process and workforce will enable the organization to succeed far beyond my tenure, and regardless of the leadership that will follow me.

It is critical to note that I, as well as the management of this organization, value high standards of morale and ethical conduct for ourselves and our employees. It is our objective to maintain employee accountability through proactive management practices,

the development of standards and systems and measurement tools.* In our newly formed Training Unit, we are fortunate to have appointed two employees, with extensive experience in training, employee discipline, ethics and conduct, and upward mobility. Under my leadership, the Training Unit will focus on those aspects necessary to enhance our professionalism and accountability as a parole board, since our value as an organization is measured by the integrity, professionalism, knowledge, skills and abilities of our staff.

5.) To collaborate with all entities within YACA in the implementation of an overarching correctional strategy, with the ultimate goal of returning California's correctional system to its role as a national model.

As the primary leader within this organization, I will continue to work collaboratively with all entities within YACA in implementing a balanced and comprehensive strategic plan which espouses the need to prioritize those requirements imposed by the law, the Governor, the Legislature and the citizens of this state. The strategic plan is an integral tool in accomplishing change, which enables the Board to work in concert with other Boards and Departments within YACA, to make this organization a model for other states to emulate. In order to obtain this status, it is crucial, that as an entity, we continue to be proactive in collaborating with stakeholders and other state agencies in the development of meaningful programs and processes that enhance our status. As the Chair of the Board, I am sensitive to the public scrutiny placed on the actions of those who serve in Government, and the fact that we cannot make decisions in a vacuum in that our decisions can have a wide impact, with positive and/or negative ramifications upon the citizens of this state. As such, we must be open to suggestions, constructive criticism and recommendations from our stakeholders on how we can better serve the people of this state.

These objectives cannot be accomplished by simply providing lip service. They must be accomplished through our actions, our willingness to look at ourselves with a critical eye, and with the internal fortitude and the tenacity necessary to admit when we are wrong and to make the necessary changes within our organization. As the Chair, I recognize and accept that I am responsible for everything that occurs within this organization. In accepting this responsibility, I acknowledge the fact that I must be forthright, and steadfast in my approach that it is my duty to use my resources and influence wisely to improve this organization as a whole during my tenure as the Chair.

BACKLOG OF HEARINGS

2. Based on the Inspector General's definition of a backlogged case, what is the size of the current backlog? Is there a plan to reduce or eliminate the backlog of lifer hearings?

The current tally of backlogged lifer cases is 1,388. Unfortunately, this number is misleading. The backlog tally includes any hearing that is originally scheduled, but not completed. This formula does not take into account the fact that approximately two-

thirds (2/3) of the postponements and continuances are at the request of inmates and their attorneys for legitimate due process reasons, and not because of the BPT's inability to conduct the hearing.

From August through December, 2004, the BPT scheduled 2,377 lifer parole hearings, 1034 of which were postponed. The BPT was responsible for approximately one-third of the postponements (343) and approximately two-thirds of the postponements (691) were requested by inmates and their attorneys.

Of the BPT-induced postponements, 101 were caused by the need for updated psychological evaluations and 160 were caused by the unavailability of hearing panel members in December 2004. Of the postponements requested by inmates or their attorneys, 280 were the result of issues relative to the psychological evaluations, and 116 were prompted by the need to update parole plans. Other less prominent reasons for postponements included the unavailability of private attorneys, disciplinary issues, pending litigation or follow-up investigation and illness.

We believe this progress will continue as additional Commissioners are appointed to the BPT, enabling us to convene the maximum number of hearing panels. It should be noted that, despite the backlog tally, the BPT has been conducting a record number of hearings, and the totals are more than double the number of hearings that the Board had typically conducted five years ago. Each Commissioner currently is assigned 21 cases per week, compared to as few as two per day in past Administrations.

The number of hearings and postponements this year compared to five years ago is as follows:

1999:	1,953 hearings	56 postponed
2004:	4,550 hearings	1,681 postponed

The BPT also anticipates that the number of postponed hearings will be reduced in future years as a result of policies and procedures adopted by the California Department of Corrections in December, 2004 regarding the conduct of psychological evaluations, the single largest cause of postponements. A couple of months ago, leadership from the BPT met with Dr. Nadim Khoury, Health Care Services Division, CDC, for the purpose of discussing issues relative to what we believe to be inadequate psychological evaluations for life inmates. During this meeting, it was agreed that CDC would redirect resources in order to ensure that psychological reports are conducted, at a minimum, every two years, or whenever a psychological report is requested for specific reasons. We anticipate this process will take effect within the next 60 days.

The key to alleviating this problem rests with having all available Commissioner positions filled, and with having the appropriate resources in place to enable the CDC and BPT to conduct those support functions necessary to adequately prepare for a hearing, i.e., preparation of hearing packets, psychological reports and counselor reports, notification

of victims next of kin, district attorneys office, law enforcement, etc. The current administration has been very active in recognizing this issue and we expect that the majority of our Commissioner vacancies will be filled in short order. In addition, the Governor's proposed reorganization plan recommends a 17-member board, which would enable the proposed Board of Parole Hearings to deploy its resources as it deems necessary in order to address the backlog and other needs.

3. *How does the backlog affect when an inmate can expect to get his or her next hearing? How long are inmates waiting for their next hearing date after their denial period has expired? Does it alter parole dates?*

As of January 2005, the backlog of hearings for life parole consideration is approximately 1,388 cases. Under our current circumstances, a life prisoner with the possibility of parole can expect a hearing to occur five to six months late. This situation is currently the subject of litigation.

The legal effect of this delay on the inmate is speculative. To the inmate who remains unsuitable for release, the delay does not effect his/her release date. To the inmate found suitable for release with a future release date, the delay likewise has no legal effect. It is only those inmates found suitable for immediate release who have a colorable claim that a more timely hearing would have advanced that release date by the period of the delay.

Even though this impact affects a minimal number of inmates for arguably a relatively brief period of time considering their offenses and the length of their incarceration, such delay should not be presented as a justification or excuse for a delay of a scheduled hearing. The law and regulation sets the schedule for such hearings. Not only the inmate, but the public, the courts, and the Legislature, have every right to expect us to conform to these standards.

In addition, it is important to recognize that the number of life inmates eligible for their initial hearings increased annually, given the over 25,000 lifer inmates currently incarcerated within the CDC.

As previously noted, the key to alleviating this problem rests with having all available Commissioner positions filled, and with having the appropriate resources in place to enable the CDC and BPT to conduct those support functions necessary to adequately prepare for a hearing, i.e., preparation of hearing packets, psychological reports and counselor reports, notification of victims next of kin, district attorneys office, law enforcement, etc. The current administration has been very active in recognizing this issue and we expect that the majority of our Commissioner vacancies will be filled in short order. In addition, the Governor's proposed reorganization plan recommends a 17-member board, which would enable the proposed Board of Parole Hearings to deploy its resources as it deems necessary in order to address the backlog and other needs.

HEARINGS AND PREPARATION TIME

4. *What procedures are in place to ensure that commissioners and deputy commissioners who sit on lifer panels have adequate time to review these files prior to a hearing? When do you believe these reviews occur?*

The BPT provides the first half of every Monday for commissioner travel and preparation time for the week. The pace of the hearing schedule, prompted by the backlog of cases, however, has negated our ability to provide addition time within current work hours. It should be noted, however, that the hearing panels are composed of highly trained and experienced individuals who have the ultimate responsibility of not moving forward with a hearing unless they are fully prepared to do so.

The Commissioners on the Board are conscientious, hardworking and dedicated individuals. Currently, they utilize their evenings in their hotel rooms to prepare for the next days hearings.

5. *What are your ideas for how to improve the way commissioners prepare for hearings?*

As the current Board Chair, I have several ideas for how to best improve how our commissioners prepare for hearings, including the following:

- Provide for actual preparation time based on the Department of Finance's approved 48 minutes in the scheduling of the hearings.
- Pursue the concept of having Associate Governmental Program Analysts assist panels by reviewing files for accuracy and completeness, summarizing the cases, and acting as a clerk during the proceedings.
- Develop a system to have all lifer files reviewed for potential problems at least 30 days prior to a hearing to eliminate problems that will arise on the day of the hearing.
- Increased training and communication of recurring concerns related to hearing preparation.
- Continued interaction with CDC staff to correct/improve flaws in the logistical process of conducting lifer hearings.
- Provide sufficient resources for CDC to prepare and distribute the packets to BPT panels earlier.

Many of these ideas for improvement are already being discussed as part of the Agency's proposed reorganization. I will keep you apprised of our progress in the future.

6. *How has the Board implemented the mandate requiring commissioners to conduct hearings every workday, with limited exceptions.*

Currently, BPT lifer panels have 21 hearings scheduled per week, consisting of three per day on Mondays and Fridays, and five per day for Tuesday through Thursday. Commissioners and Deputy Commissioners are provided reasonable travel and preparation time on Mondays to arrive at the Institution and prepare for the day's hearings. Although the Office of Inspector General indicated in an audit, based on the personal comments of a former Commissioner, that fifteen minutes is the amount of time required to prepare for a lifer hearing, it is more accurate to estimate an average 48 minutes of preparation time that is recognized by the Department of Finance in BPT budget and staffing calculations. Personally, I take anywhere from 45 minutes to one hour per case. My hearings typically take 1½ to 3 hours, and sometimes longer. Much of this depends on the volume of documents to review and the complexity of the case.

I would suggest that the hearing day for Commissioners be structured as if the backlog did not exist. The backlog should then be addressed outside of the normal structure. In this case, the proposed reorganization of the departments under YACA will assist in providing additional resources necessary to address the backlog and maintain adequate preparation and hearing time. We are also exploring the use of positions that would function similar to a court clerk in aiding in the preparation and clerking of the hearings.

While Commissioners have preparation time on Mondays, Tuesday through Friday hearing packets are brought back to their hotel and approximately three to four hours is spent each evening after the full day of hearings to prepare for the next day. This is workload that is not captured in the schedule or recognized by individuals who have observed our lifer hearing process. It is also noted that some Commissioners request copies of files before the week starts, however, this is additional workload for CDC staff, which they are not appropriately funded to complete and creates workload complications.

A Commissioner serves in a quasi-judicial role, even though life parole consideration hearings are administrative in nature. Much like a judge, no Commissioner should go forward with a hearing until they are thoroughly prepared. It is within the Commissioners discretion to postpone a hearing if they are not adequately prepared and cannot be prepared within a reasonable time to proceed. More than likely, a Commissioner will take as much time as necessary to properly conduct a hearing and cases later in the day may have to be postponed as a result.

In order to ensure optimum preparation time and due process for all inmates and participants, no more than four hearings per day should be conducted with a mandatory lunch break. This would provide additional time during the evening, in which to prepare for the next days hearings. Currently, Commissioners work straight through the day without a lunch break, again in order to maintain the compressed hearing schedule brought on by the backlog. Although four hearings per day is ideal, the existing backlog would leave such scheduling open to criticism, albeit unjustly so. It is a mistake to try to compensate for vacant Commissioner positions by scheduling additional hearings in the

day. It is my opinion and significant to note that there comes a point where the sheer quantity of hearings can have an inverse relationship to the quality of hearings and due process. In addition, such scheduling puts unrealistic strain on other static resources such as Deputy Commissioner and BPT legal for decision review.

It is important to recognize that although the hearings scheduled for Commissioners on a daily and weekly basis is excessive, the Commissioners on the Board are conscientious, hardworking and dedicated individuals, who utilize their evenings in their hotel rooms to prepare for the next days hearings. Furthermore, it is significant to note that although Commissioners require more than 8 hours per day to conduct the present days hearings and to prepare for the next days hearings, such a rigorous schedule has the potential to "burn out" the Commissioners, which could undoubtedly result in a decrease in the quality of hearings conducted because of the physically and emotionally exhaustive nature of the task at hand.

IMPLEMENTATION OF VALDIVIA REMEDIAL PLAN

7. What is the status of the implementation of the Valdivia Remedial Plan? What effect has it had on the Board's workload and the ability to meet its mandates?

The Valdivia Remedial Plan has been implemented well in advance of the deadlines mandated in the Stipulated Permanent Injunction Order. All of the time frames set out in the Order have been met in a timely fashion, and we anticipate implementing the final segment of the Injunctive Order (probable cause hearings), on or before February 15th, 2005, some 3 1/2 months earlier than required by the Court Order. This will enable us to identify and make corrections to "kinks" and inefficiencies that will undoubtedly arise as we implement the new and systematically complex revocation process.

In order to comply with the stipulated settlement agreement, as set forth in the Valdivia v. Schwarzenegger S-94-0671 (E.D. Cal. March 9, 2004) permanent injunction, the BPT in conjunction with the CDC set forth to establish the new parole revocation process referred to as the Valdivia Remedial Plan (VRP).

This plan transfers the responsibility for the daily functioning of the parole revocation process from the CDC's Parole and Community Services Division (P&CSD) to the BPT.

In addition to shifting the operational procedures to the BPT, the plan called for:

- A complete overhaul of the unitary parole revocation hearing process, to include Probable Cause Hearings (PCH's) and Expedited Hearings with offers of proof;
- More stringent timeframes which require a Probable Cause Determination within 48 hours of the parole hold, a face to face Notice of Charges within 3 business Days of the hold, A PCH within 10 business days of the Notice of Charges and a Revocation Hearing within 35 calendar days;

- And appointment of counsel for all parolees who are pending parole revocation proceedings.

From the latter part of the year in 2003 to present, the various organizations under YACA have worked together to formulate the strategies for compliance with the VRP objectives and the court injunction.

The BPT borrowed staff from several units to assist in the design and implementation of the Valdivia process, to the detriment of our existing workload and backlogs. The consequences included increased hold to hearing time frames in the revocation process, morale problems within the organization because of increased workload demands, and an incredible strain on the management staff assigned with not only developing the new process, but attempting to keep up with the current process with its existing resources.

8. What type of training has been provided to commissioners and deputy commissioners on the requirements of Valdivia?

The BPT began training Deputy Commissioners on the new Valdivia requirements in the Fall of 2004. The BPT had a three-day intensive training session in Northern California for Deputy Commissioners in early September, and an identical three-day intensive training session in Southern California one week later. The BPT hired 11 new Deputy Commissioners and filled 9 vacancies due to retirements in October of 2004. Furthermore, we conducted a five-week academy which concluded on Friday January 7, 2005. A significant portion of this training consisted of the law, due process and procedural changes surrounding Valdivia. The new Deputy Commissioner hires have since been deployed to the field to their initial field training. Lastly, we are scheduled to conduct additional legal training relative to the revocation hearing for all existing Deputy Commissioners during the first two weeks of February 2005.

Commissioners are not involved the parole revocation process.

9. Have deputy commissioners begun assigning intermediate sanctions? What guidelines have been provided as to when intermediate sanctions are appropriate and what type of sanction is appropriate? How often have such intermediate sanctions been applied?

Deputy Commissioners have been provided instruction that remedial sanctions are to be considered for all revocation actions that are presented for Board action. The appropriate sanction by type is dependent upon individual case factors and each case is evaluated on its own merit. Deputy Commissioners have a tremendous responsibility and wide discretion in possible dispositions. Accordingly, the acceptable disposition will be one that is within applicable laws, rules, regulations and policy directives and fully supported by the record.

Remedial sanctions are considered for all parolees who violate the law or conditions of parole. Remedial Sanctions, although referenced, are not a part of the Valdivia Court Order. The CDC has the primary responsibility to impose or recommend these sanctions

even before referring a case the BPT. Some parolees are afforded remedial sanctions by parole staff without a referral to the BPT. In spite of this fact and even after several reviews at various parole levels in which parole staff have concluded that remedial sanctions may not be appropriate, the Deputy Commissioner still have the ability continue to consider remedial sanctions in the decision making process. For those cases that are forwarded for review by the BPT, a recommendation for a remedial sanction is approved by the BPT in all but a very small percentage of the cases. Those cases which were not approved were mainly as a result of a parolees violent criminal history. In 2002/2003, approximately 5,265 parolees were recommended for various drug treatment programs. Of that, 5,225 were approved and 40 were denied. This is information on just one of the remedial sanctions available. Additional remedial sanctions include: electronic monitoring, half-way back programs, residential treatment programs, and various outpatient programs.

10. What oversight has been installed to ensure that these requirements are being applied fairly and consistently by all deputy commissioners?

For clarification, fair and consistent application of remedial sanctions assumes that there are no variations in case factors, which is incorrect. Our desire is to have well reasoned and supported decisions that are within applicable guidelines, consistent with due process and the preservation of public safety. Nonetheless, the BPT has oversight measures in place for both quality control and training purposes. The Board has established a quality control unit that has a function of performing decision review on revocation actions on a random basis. In addition, under Valdivia implementation, every parolee will be entitled to an attorney if they are in the revocation process. Such representation serves as an additional means of ensuring a fair and consistent application of remedial sanctions. Oversight also occurs through increased training and the recent formation of a BPT training unit.

BATTERED WOMAN SYNDROME

Prior to addressing the specific questions you have asked regarding Battered Woman Syndrome (BWS) issues, I wish to inform you that one of my priorities since assuming the Chairperson role has been to enhance our process as it relates to the Battered Woman Syndrome. Within the first few months, I directed staff to pull together a meeting of various special interest group leaders, experts, and executive staff to address BWS issues. Many of the issues you raised were identified by this group, the Battered Woman Focus Group, in a meeting hosted by the BPT May 24, 2004. The following are commitments made to the Focus Group members that my staff has been working on implementing since that time.

- Update training plan for Commissioners and Deputy Commissioners to reflect current practices and handling of battering cases.
- Seek additional resources with which to conduct training.
- Work collaboratively with sources that enhance our investigative product and use of information in subsequent proceedings.

- Train more investigators to conduct BWS investigations. (Note: with the hiring freeze no longer in effect, the BPT will be able to fill vacant investigator positions which will ultimately improve the management of this workload.)
- Maintain the integrity of the investigative process and product. However, provide for a process that allows for report disclosure and advise the inmate on the procedure to correct an inaccurate record.
- Consider a process for utilizing a battering expert, and/or provide for more relevant clinical assessment of the inmate within the scope of the investigative process.

11. What is the current complement of staff assigned to address BWS issues?

The BPT has attempted to maintain a complement of 3 to 4 investigators assigned to conduct BWS investigations. However, during the past year, 2 BWS investigators transitioned from the normal investigations function, leaving us with 2 experienced investigators. As of January 2005, the complement has been brought back to 3 experienced BWS investigators, and 2 newly assigned investigators for a total of 5.

What is the process for uncovering and investigating BWS issues? How long does the process take?

The process for uncovering BWS cases includes:

1. Self Referral - the inmate either requests clemency from the Governor's Office and the case is forwarded to the BPT, or the inmate may write a letter to the BPT asking for review of their case based on BWS;
2. Referral by a Commissioner/Deputy Commissioner - either during a Documentation hearing or Parole Suitability hearing, a Commissioner/Deputy Commissioner identifies a case that appears to merit investigation based on BWS;
3. Referral by Other - on occasion, an investigation has been initiated based on information received from the inmate's attorney, a legislative staff, or a BWS Expert.

The process for investigating these cases has evolved over the years, with the most significant changes occurring in the year 2000. Since that time, the following steps are generally followed for BWS investigations:

- Each case is screened to see if it meets the most basic criteria.
- For cases that meet the criteria, preliminary documents are retrieved from either the inmate's Central File or from the BPT hearing packet and transcript.
- The inmate is sent a letter of invitation to be interviewed. If she accepts, the personal interview is conducted at the institution. This interview generally takes from 2 to 4 hours, after which the investigator completes a comprehensive

questionnaire with the information provided by the inmate. The amount and accuracy of information provided by the inmate, to some degree, can affect the ability of the investigator to locate pertinent information regarding domestic violence experiences.

- The investigator then collects any additional documents needed from the Central File and returns to the office to complete the investigation.
- A large part of the investigation at this point focuses on attempts to locate witnesses, pertinent documents and on conducting interviews.
- Once the investigation is complete, the case is sent before an internal BWS Committee for evaluation. The committee is comprised of the BPT Chairperson, the Executive Officer, a representative from the legal office, the Chief of Investigations, the Chief of the Mentally Disordered Offender Unit, and a representative from the Hearings Division. A decision is then made as to whether or not the case requires review by a BWS expert. If so, all information and the audio tapes of the interviews are sent to the expert for evaluation. The BWS Committee also determines the appropriate venue for consideration of the information.

If the sentence was LWOP or DSL, it must be presented to the full board for possible return of sentencing to the courts under Penal Code section 1170(d). If the inmate was denied for multiple years at the last hearing, the Committee could decide to put it before the full board for consideration of a re-hearing or expedited hearing. The majority of cases are approved for consideration at the next parole suitability hearing.

- Completed investigations are forwarded to the Central File for consideration by the hearing panel. In past, these reports were forwarded to the confidential section of the file, making only the summary findings available to the inmate. Recently, under my leadership, the BPT changed this practice. Reports placed into the general Central File, where they are available to the inmate and her attorney. We are also in the process of having all past reports moved to the regular Central File. This will provide the inmate with an opportunity to correct any erroneous information by bringing it to the attention of the Investigations Division. In addition, the information is readily available to counsel working within the habeas project.

How long does the process take?

A BWS investigation is one of the most complex investigations conducted by the BPT, due to its nature, and can take from 2 to 6 months to complete. The BPT is no longer budgeted for these investigations, but we continue to make them a priority by moving other investigations aside when possible. The actual investigations range from 100 to 400 hours, depending on the factors of the case.

Is there currently a backlog?

The BPT has 36 cases pending investigation at this time. All cases are currently assigned to an investigator. Not all of them, however, are being worked on at this time. BPT investigators conduct up to 13 different types of investigations, and each has a caseload of about 50 cases. While BWS investigations are given high priority, other investigations must occasionally be prioritized, such as pre-parole investigations of inmates that have received parole grants and are undergoing review, or a death penalty case that is nearing execution.

Investigators attempt to prioritize each case based on need. In a case where the hearing was postponed pending an investigation, we must give it greater priority than one where the inmate was found unsuitable for one or more years. If the inmate is not going to be scheduled for his/her initial hearing for several years, or the inmate's sentence is Life Without the Possibility of Parole, the case may have a lower priority than the ones previously mentioned. However, these cases still have greater priority than most other types of investigations.

If a finding of BWS is made, what information is communicated to commissioners participating in the parole suitability hearing?

Regardless of the finding, the full investigation report with pertinent attachments is sent to the inmate's central file and made available to the BPT hearing panel. This report includes an investigative "finding" of Substantiated, Partially Substantiated, Unsubstantiated, or Inconclusive.

12. Does the "expert" hired by the Board of Prison Terms, who makes final BWS determinations, meet personally with the inmates applying for BWS status? If not, why not?

It is important to clarify that the BWS expert does not make the final determination of BWS. He is one member of the BWS Review Committee. If a case is substantiated through the investigation process, it is not referred to the BWS expert. If it is unsubstantiated, the same applies. Typically, we refer only those cases that are either inconclusive, or partially substantiated.

The BPT's expert does not meet personally with each candidate for three reasons. First, BPT investigators are trained by the expert to conduct the interviews, which are tape recorded. A copy of the audio recordings are mailed, along with the investigation file and supporting documents, to the expert in specific circumstances. On occasion, the expert will refer those cases back to the BPT, with instructions for additional follow up questioning with the inmate. Second, the expert has physical limitations which make it difficult for him to travel. Third, the BPT chose to utilize this method partially as a result of budget constraints.

The investigator must always interview the inmate to obtain as much information as possible for investigative and follow-up purposes. By the time the BPT's expert receives the material for review, the investigators have usually been able to corroborate or negate a number of the claims, which is valuable information for the expert to have as he evaluates each case on its own merits.

It is significant to note that if an investigation substantiates a number of the inmate's claims, and it is clear they were the victim of domestic violence related experiences, there is no need to have an expert review the case. The BPT determines the most appropriate venue for that information to be considered, and if it involves a review by one or more Commissioners, they are trained in how to utilize the information. If the investigation is unable to substantiate a history of domestic violence experiences, an expert's opinion, without any facts to substantiate the claim, is not likely to carry enough weight to evoke a significant change in the panel members view regarding the inmate's culpability in the crime.

The BPT is currently considering expanding its base of experts. It is necessary, however, to maintain the quality of review we currently receive. Our expert, Dr. Lee Bowker, has some very specific qualifications that may be difficult to duplicate. He was the court's expert on 2 of 3 precedential BWS cases, Humphrey and Day. In addition, he has extensive experience in the field of criminology and in conducting criminal justice evaluations for a parole board. While he has been able to service our needs, we realize that at some point, he may elect to terminate his contract with us. Our plan is to add one or two experts to the pool within the next six months.

13. Since you have been Chair, how many claims of BWS have been investigated?

Nine (9) BWS investigations have been completed since February 2004

How many have been denied?

No requests for investigation were denied. Generally, the only time we deny a request is if it does not meet the basic screening criteria.

How many approved?

If the question relates to how many cases have resulted in a finding of BWS, approximately 44% had some finding of BWS. The breakdown is as follows:

2 Substantiated

2 Partially Substantiated

5 Unsubstantiated

*3 of the 4 with findings of BWS were found suitable for parole this past year, and the 4th one requested postponement of her hearing.

14. What training do commissioners receive to address BWS issues?

In past, Commissioners have received an initial 4 hours of training, as well as annual updates. Just recently, on December 16, 2004, the BPT arranged for three additional hours of training for Commissioners. It was presented by Olivia Wang, an attorney with Legal Services for Prisoners with Children and a Free Battered Women Steering Committee Member, and Andrea Bible, who is the Free Battered Women Project Coordinator.

Do you believe it is sufficient?

Whether it is sufficient depends, to some degree, on the background of the Commissioner. Prior to becoming Chair of the BPT, I was a staff investigator who worked on BWS cases and, as a result, am very knowledgeable about the issue.

However, based on my own personal experience with these cases, I recently determined that the four hours of initial training should be increased to a full eight-hour day.

In addition, I realized that the training was not standardized, and varied somewhat from one session to the next. At my direction, the BPT recently developed a standardized training manual which will be used for the first time in February, 2005. That training session is to develop a small corp. of Deputy Commissioners that will assist Commissioners in conducting parole suitability hearings at the women's institutions. In addition, any newly appointed Commissioners will attend and existing Commissioners have been invited to attend if they believe they need further training in this area.

I am pleased with the continuing evolution of the Board in this area, and I believe our success is demonstrated by the number of battered women released this past year through parole grants and re-sentencing by the courts.

PSYCHOLOGICAL EVALUATIONS

15. What is your understanding of the current policy regarding psychological evaluations of inmates? How much in advance of the hearings are they given? At what point is a psychological evaluation deemed too old to be used in determining suitability for parole? What is done if the inmate appears at a hearing without a recent psychological evaluation?

Since my designation as Chair of the BPT, I have initiated changes to improve the psychological evaluations provided to the Board.

The BPT and CDC entered into a Memorandum of Understanding concerning life term inmate mental health evaluations in 1998. Recently, that MOU has been reaffirmed. As a result, it is understood that a full clinical evaluation shall be prepared for all initial parole suitability hearings. For all subsequent hearings, however, an updated addendum report shall be required unless the existing report is or will be less than two years old at

the time of the tentative hearing date or if a Commissioner requests a subsequent evaluation for the purpose of addressing specific issues.

If an inmate appears before the BPT for a parole consideration hearing, and his/her psychological report is not recent (within three years), a Commissioner will conduct an evaluation to determine if sufficient information exists in the report in order to enable the panel to make an informed decision. However, if it appears that there are psychological factors that need to be addressed or updated, the panel will, in most circumstances, postpone the hearing, order a new psychological evaluation, and request that the case be placed on the next available calendar after the report is completed.

16. How do you ensure that all commissioners and deputy commissioners follow the same guidelines when it comes to the use of stale psychological evaluations?

Under the recently re-affirmed agreement between CDC and the BPT, there should be no stale psychological evaluations, after a transition period of approximately 60 days, to make up for those that are already delayed. In addition, the CDC and the BPT have agreed upon a specific format in psychological evaluations, that takes into account those factors which are significant to Commissioners during parole suitability hearings, (e.g., remorse, insight, psychological gains).

Senate Rules Committee

Responses to Questions to Susan Fisher, Commissioner Board of Prison Terms.

1. What are your goals and objectives as a member of the Board of Prison Terms? What do you hope to accomplish during your tenure?

My primary function as a Commissioner is to conduct parole suitability hearings for life inmates. Therefore, my goals and objectives are primarily focused on my commitment to conduct those hearings professionally and with integrity.

It is my intention to prepare for each hearing as thoroughly as possible, to consider whether the panel has all of the information necessary to evaluate the inmate's suitability and to approach each case in an unbiased and open-minded manner.

I make every effort to continue to update my knowledge in all of the areas that affect lifer hearings and life inmate suitability factors, and I will take an active role in any discussions related to BPT policies and their affect on both public safety and due process.

Backlog of Hearings

2. Based on the Inspector General's definition of a backlogged case, what is the size of the current backlog? What do you believe could be done to reduce or eliminate the backlog of lifer hearings?

As of December, 2004, the backlog of parole hearings was 1,388. The ability to reduce or eliminate the backlog lies with having the ability to convene more hearing panels. Also, increased resources for the Department of Corrections' staff that is necessary to support the BPT's hearings will help reduce the backlog.

3. Do you believe that the statute allowing two-person panels should be extended indefinitely?

I believe that the most effective parole hearings for lifers are those conducted with three-person panels that include two Commissioners. That ensures that the appropriate weight is given to the influence of those appointed as policy makers, rather than staff.

But the ability to convene two-person panels provides the Board with flexibility to respond to unusual circumstances and emergencies. That can include illness, resignation of Commissioners or a sudden increase in the demand for hearings. For that reason only, I believe that the statute allowing two-person panels should be extended indefinitely.

Hearings and Preparation Time.

4. When do you review an inmate's file in preparation for a lifer hearing? When do you believe the deputy commissioner who sits as one of the two members on the panel reviews the file? Do you believe you have adequate time for review? Typically, how much time do you take to prepare? What do you review to prepare for the hearing?

I review each inmate's file in advance of the hearing and feel that I am very prepared to conduct each one. The amount of time necessary to review a file will vary from one inmate to another. Some have small files and others have boxes of documents, depending on how long they have been in the institution, whether they are programming and how complex their case is.

On average, I believe it takes about an hour to review each file in advance. I typically use Monday mornings to review cases for that afternoon. During the remainder of the week, I review cases at the end of each day for the next day. The deputy commissioners review the same cases and I do and at the same time. As a result, this is not typically an eight-hour a day job.

It should also be noted that, to the degree the information I need to review is in an inmate's Central File, I can only review that case at the prison, since the information cannot leave the institution for security reasons.

Among the things I review are the inmate's disciplinary history, work history, psychological review, counseling reports, correspondence submitted by outside groups including Districts Attorney and supporters and transcripts of previous hearings, when it is necessary.

Battered Women's Syndrome

5. If the Investigations Division makes a finding of BWS, what information is communicated to you for consideration at the hearing? How do you incorporate that information into the hearing process?

I receive the case summary and all of the investigation report, which also is shared with the inmate and placed in her Central File. I also receive all confidential information.

That information and finding is discussed with the inmate as part of her parole suitability hearing. A finding of BWS is not an assurance of parole. BWS victims are evaluated under the same criteria as any life-sentenced inmate to determine whether or not they would pose a public safety risk if released on parole. The BWS finding is an additional mitigating factor in making that ultimate decision.

6. Does the "expert" hired by the Board of Prison Terms, who makes the final BWS determination meet personally with inmates applying for BWS status? If not, why not.

The BPT's expert on BWS, Dr. Lee Bowker, does not meet personally with female inmates applying for BWS status. All of the BPT investigators who manage BWS case files have been trained by Dr. Bowker in the appropriate interview techniques. Not all cases are referred to Dr. Bowker. In fact, he sees only those cases where there is some ambiguity or uncertainty over the determination of BWS. Those cases that are referred to him include audio tapes of interviews with inmates, in addition to other supporting documents and case files.

7. How much training have you received on BWS? Do you believe it is adequate?

As a newly appointed Commissioner, I received four hours of training in BWS issues as part of my orientation. The BPT also makes BWS updates available during our quarterly training sessions and they soon will be expanded from four hours to eight.

I do believe the training is adequate. The amount of time each Commissioner needs to be familiar with BWS issues will vary, depending on their background. As a former executive of a crime victims' organization, I worked extensively with victims of domestic violence, so I have exposure to the issue beyond my time at the BPT.

Lifer Packets and Psychological Evaluations.

8. What is your understanding of the current policy regarding psychological evaluations of inmates? How much in advance of the hearings are they given? At what point is a psychological evaluation deemed too old to be used in determining suitability for parole? What do you do if the inmate appears at a hearing without a recent psychological review?

The BPT's policy is to rely on updated psychological evaluations that, as a rule of thumb, should be no more than two years old. That is more important in some cases than others, however. It is more critical in the case of inmates who have been going through significant programming, where a change in their psychological profile should be expected. There are cases where an older evaluation is still valid to use, if the inmate is in a static situation and where issues such as addiction or anger management are not as critical.

It is always in the inmate's best interest to postpone a hearing if there is a demonstrated need for an updated psychological evaluation. I also order updates of psychological evaluations, where I think they are needed, when I complete a hearing so that they can be completed before the next scheduled hearing.

The quality of psychological evaluations, I believe, could be improved by relying less on self-reporting by the inmate and more reliance on other sources of information, such as

probation and police reports, counseling reports and an inmate's behavior and work history while incarcerated.

9. Are the Department of Corrections and the Board of Prison Terms able to effectively coordinate the preparation and distribution of lifer packets? Is the quality the same for all institutions? What, if anything, should be done to improve the quality of, or the timeliness, in which you receive the packets?

I receive the lifer packets in as timely a fashion as I can make use of them. By conducting up to 21 hearings per week, I review lifer packets each day for the next day's hearings. With that heavy a hearing schedule, it isn't practical to receive information days or weeks in advance, since there would be no time to take advantage of the earlier delivery.

Over the last two years, the BPT, working with the CDC, developed a uniform standard for information that is included in the lifer packet, which makes the hearings easier to conduct.

10. Are there other instances in which you believe the cooperation and coordination between the Department of Corrections and the Board of Prison Terms needs to be evaluated or improved?

While there are always everyday, minor problems that need attention, during my tenure on the Board of Prison Terms I have received excellent cooperation from the Department of Corrections.

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SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to SENATOR BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JACKALYNE PFANNENSTIEL, Member
Energy Resources Conservation and Development Commission

RALPH CAVANAGH, Energy Program Director
Natural Resources Defense Council
Center for Energy and Energy Renewable Technologies
Pacific Institute

STEVEN KELLY, Policy Director
Independent Energy Producers Association

WILLIAM J. KEESE
California Energy Commission

OPHELIA BASGAL, Director
Alameda County Housing Authority

1 ROBERT MANWARING
Legislative Analyst's Office

2 RANJIT "RICKY" S. GILL, Member
3 State Board of Education

4 JACK O'CONNELL
5 State Superintendent of Public Instruction

6 BONNIE M. REISS, Member
7 State Board of Education

8 SENATOR ABEL MALDONADO

9 DARRELL STEINBERG
Former Assembly Member

10 JOHN LEICHTY, Associate Superintendent
11 Los Angeles Unified School District

12 MARK ROSENBAUM, Legal Director,
13 ACLU in Southern California
Speaking as an Individual

14 ARLENE ACKERMAN, Superintendent
15 San Francisco Unified Schools

16 THEODORE MITCHELL, President
17 Occidental College

18 TERRY TAMMINEN, Governor's Office
Cabinet Secretary
19 Speaking as an Individual

20 RUTH BLOOM, Member
21 State Board of Education

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have four gubernatorial appointees. We will begin with Jackalyne Phannenstiel.

How are you?

MS. PFANNENSTIEL: I'm fine, thank you.

CHAIRMAN PERATA: This is for confirmation to the Energy Resources Conservation and Development Commission.

Welcome, and please open.

MS. PFANNENSTIEL: Thank you.

Mr. Chairman and Committee Members, I'm honored to have the opportunity to appear before you today.

Before I offer a short opening statement, I'd like to thank in advance the people who took time out of their busy schedules to be here to support my confirmation. I know they'll get a chance to speak shortly.

I'd also like to recognize two people who could not be here in person but who are supporting me from afar, my sons, Matt, who's a senior at UC Santa Barbara, and Steven, a freshman at Piedmont High. I hope they're both logged onto the web cast to listen.

Being appointed to the California Energy Commission by Governor Schwarzenegger was a tremendous honor for me, and the culmination of a long career in energy. In many ways, I've been preparing to be an Energy Commissioner throughout my professional life.

I've been in the energy field for 30 years now, having joined the staff of the Connecticut Public Utilities

1 Commission in 1975 to help that state deal with the impacts of
2 the 1973-74 OPEC oil embargo. Subsequently, I was recruited to
3 the California PUC, and then to PG&E, where I had a 20-year
4 career, most of it as Vice President for Planning.

5 After leaving PG&E at the end of 2000, I went out
6 on my own as an energy consultant.

7 Because the seat I hold at the Energy Commission
8 is designated for the environmental commissioner, I'm often
9 asked how a 20-year PG&E career reconciles with environmental
10 credentials. In fact, as VP of Planning, I had the opportunity
11 to lead PG&E's management in many initiatives for environmental
12 preservation. The first work I did with Ralph Cavanagh, who is
13 here today, was to advocate internally and then externally for a
14 program of utility investments in energy efficiency.

15 During the early '90s with my active
16 participation, PG&E took a national leadership position in
17 environmental protection and earned a number of prestigious
18 awards for its successes. PG&E supported my work with outside
19 groups, enabling me, for example, to serve on the Board of the
20 Pacific Institute, a global leader in sustainable resources, and
21 to chair a major national study of energy conservation modeling
22 at Stanford University.

23 I have been at the Energy Commission for nearly
24 nine months now, so I have a track record to stand on. Thanks
25 to my excellent Chairman, I serve on three essential policy
26 committees. I Chair the Energy Efficiency Committee, and I
27 serve as Associate Commissioner on the Renewables and the
28 Transportation Fuels Committees.

1 In addition, I presided over the siting
2 proceeding for a 96 megawatt power plant in the City of
3 Riverside. In December of last year, the Commission granted the
4 city's request for a small power plant exemption, which is
5 available for plants under 100 megawatts, where the Commission
6 finds there would not be an environmental impact.

7 Also as Chair of the Energy Efficiency Committee,
8 I led the Commission's unanimous adoption of new Appliance
9 Standards that will go into effect in 2006, saving energy and
10 reducing customers' bills every year thereafter.

11 There is much remaining to be accomplished in the
12 energy field in California. We often hear the question, "Is it
13 fixed yet," referring to the California Energy Crisis of 2001.
14 My answer is that we're taking the right steps and making
15 progress, but that the solution is long-term. We need more
16 energy efficiency; we need more renewables; we need more power
17 plants, and in that order.

18 When my term is up in 2009, I would hope we no
19 longer need to ask whether we have sufficient capacity to meet
20 the demands of the upcoming summer. But also, I would hope that
21 we've met our demands in the most economic and environmentally
22 protective ways: More efficient appliances; buildings that use
23 less energy and, where possible, produce their own power;
24 renewable sources of power; and technologically advanced power
25 plants.

26 The state is the facing other energy challenges.
27 Transportation fuels account for about a third of the energy
28 used in California, and we're not making sufficient progress in

1 the battle to reduce our dependence on petroleum imports. We
2 need to do more to promote fuel efficiency, alternative fuels,
3 improved technologies, and public transit. And we need to
4 assure that the state's petroleum infrastructure is expanded
5 where necessary and in an environmental way. By 2009, I would
6 like to see that California has reversed its trend in escalating
7 gasoline usage and is on the path to a more sustainable energy
8 future.

9 I would appreciate the opportunity to work with
10 you and the other policy makers in the state to secure this
11 future.

12 Senators, thank you for your attention. I'd be
13 pleased to answer your questions.

14 CHAIRMAN PERATA: Thank you.

15 Members, actually we're going to go back to the
16 traditional. Those in support who'd like to come forward and
17 briefly speak. You brought all the polite people.

18 MR. CAVANAGH: Mr. Chairman, I'm Ralph Cavanagh.
19 I have since 1979 been the Energy Program Director for the
20 Natural Resources Defense Council, and I have honor to appear
21 here today also on behalf of the Center for Energy and Renewable
22 Energy Technologies, where I'm a Vice Chair, and also for the
23 Pacific Institute, a distinguished Oakland based research
24 institute headed by Peter Glick.

25 Mr. Chairman, I have known the nominee for the
26 better part of two decades and am delighted to support her as
27 the environment commissioner on the California Energy
28 Commission. In brief, and I'd be happy to answer your

1 questions, she understated her role in the revival of energy
2 efficiency at PG&E and in California.

3 I can tell you that in the late '80s, when I came
4 in at NRDC thinking I'd spend my career suing Pacific Gas and
5 Electric Company, it was not clear to PG&E that in the late '80s
6 it wanted to assume the role it now holds as the largest energy
7 efficiency investor in North America. And the principal person
8 at PG&E who turned it around, and I know this from personal
9 interaction, experience, and a whole lot of sweat, was
10 Commissioner Pfannenstiel. And that undertaking put California
11 in the position to run the most successful statewide
12 conservation campaign ever conducted in 2000-2001 belongs in
13 large part to her.

14 She also served as a distinguished board member
15 of the Pacific Institute, helped build it up. And I know,
16 Mr. Chairman, you feel strongly about Oakland-based research
17 institutes. This is surely among the world leaders on water
18 quality in particular.

19 And finally, at the Commission she's Chaired what
20 I personally regard as the most important single environmental
21 committee on the California Energy Commission, that's the Energy
22 Efficiency Committee, where under her leadership, California has
23 once again assumed the -- adopted the world's most rigorous
24 efficiency standards for buildings and equipment, and she has
25 been an exemplary leader of that group.

26 So, our organizations are proud and delighted to
27 have her as our environment commissioner at the CEC, and hope
28 very much she continues in that role, and are proud to support

1 her.

2 CHAIRMAN PERATA: Thank you, sir.

3 MR. CAVANAGH: Thank you.

4 CHAIRMAN PERATA: A glowing endorsement.

5 Yes, sir. Do you want to try to top that?

6 MR. KELLY: Watch this.

7 Thank you, Mr. Chairman. My name is Steven
8 Kelly. I'm the Policy Director for the Independent Energy
9 Producers Association in California. We represent not only
10 merchant generators but the bulk of the renewable technologies
11 that develop projects in California.

12 I'm here to strongly support this nomination.
13 Over the last months that Director Pfannenstiel has been sitting
14 on the Commission, I've been impressed with not only the fact
15 that she can bring experience to the issues that are in front of
16 California today in the energy business, which we need, but is
17 extremely even-handed and fair in the deliberation of very
18 interesting and critical matters in front of the Commission
19 today.

20 I've been impressed with her strong voice, and
21 more importantly, the strong vision that she brings to implement
22 the plan for moving California forward in developing new energy
23 infrastructure, which is much needed. And I think it's very
24 important that we maintain that vision at the Energy Commission
25 and a voice of continuity.

26 So, I strongly support this nomination.

27 CHAIRMAN PERATA: Thank you.

28 Others?

1 MR. KEESE: Mr. Chairman, Bill Keese, Chairman of
2 the California Energy Commission.

3 I just second what the two previous speakers have
4 said. We have a Commission that is working as well as it has in
5 my eight years' operation. And Jackie came in, jumped into the
6 position, both feet first.

7 And she's in the area of energy efficiency
8 because that's what she thinks is important, in the area of
9 environment because that's what she thinks is important.

10 We value her, and I would suggest that she be
11 confirmed.

12 CHAIRMAN PERATA: Thank you, sir.

13 MS. BASGAL: Senator Perata, Members of the
14 Committee, I'm Ophelia Basgal. I'm Director of the Alameda
15 County Housing Authority. And I'm batting clean-up, I guess,
16 here, but I want to speak actually a little bit, before I get
17 into my experience with Jackie working in the energy field, in
18 terms of how I met her, and a little bit about the kind of
19 person she is, which I think is equally important in terms of
20 the characteristics, personal characteristics that she brings to
21 this appointment.

22 I met Jackie about six years ago when we were
23 both appointed to the Oakland Museum of California Foundation
24 Board. And in that six years, I had an opportunity to observe
25 her leadership skills, her analytical and problem solving
26 abilities, and her commitment to community, which I really found
27 extraordinary on the Foundation Board.

28 She took a finance committee that, up to that

1 time, I think, had been really not very professional and created
2 a really first-rate financial system for the Museum that I think
3 greatly improved its operations, and addressed the kind of
4 detail and problem solving skills that she brings.

5 Jackie always asks the question at the Museum,
6 "Who is the Museum for," and always made sure that programs
7 addressed the needs of the community, and that we brought people
8 in. I think you may have seen the Latino History Project that
9 we had up here at the Capitol as an example of the kind of work,
10 of reaching out into the community.

11 In terms of my work with Jackie as an energy
12 consultant, as the Director of the Housing Authority, our
13 programs are very important -- utilities are very important to
14 our families, low-income families. The Housing Authority is
15 involved in developing a utility allowance schedule that we used
16 in -- that affects the rents that families pay. And it's a
17 process that we go through on an annual basis, and not very
18 effectively, I must say, up until time I sat down and talked to
19 Jackie about a way to improve that.

20 With her background in the energy field, she
21 clearly understood immediately the goals that I was trying to
22 accomplish, which were both providing adequate utility
23 allowances for our families, and at the same time encouraging
24 energy conservation, and really developed a system for us that
25 has been light years ahead of where we were.

26 Because of her work, I introduced her to some
27 individuals in the central office of the Department of Housing
28 and Urban Development. They had her look at a model that they

1 were developing for utility allowances to be used across the
2 country. And they were very impressed with her insight, the
3 kinds of comments that she brought to that. And in some
4 respects, because she was appointed to the Energy Commission,
5 we're still floundering around with trying to get that
6 implemented. I think had we been able to keep her, we might be
7 further along.

8 Let me say that I myself have served on a state
9 commission. I was on the Commission on Judicial Performance,
10 and I know the commitment and responsibilities that are involved
11 in being a commissioner of a state commission, and your
12 responsibilities to the State of California.

13 I think the kind of person that Jackie is, her
14 commitment to the field of energy policy, and just, I must say,
15 the joy that she gets from this kind of work is really a
16 pleasure to see.

17 So with that, I would just say that I heartily
18 recommend her confirmation to this position.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 Any others? Anyone here in opposition?

22 Seeing none, Senator Bowen.

23 SENATOR BOWEN: Thank you, Mr. Chair.

24 As we began the meeting, you handed me a memo
25 dated January 27th from the Chief Counsel of the Energy
26 Commission to Mr. Siggins, the Governor's Legal Affairs
27 Secretary. It's the first time I've ever seen this memo.

28 And it starts with the sentence that I've

1 indicated to the Commissioner that I will oppose her
2 confirmation, which was news to me since I never said I would do
3 such a thing, never even discussed opposing it, but have asked a
4 series of questions related to Section 25205 of the Public
5 Resources Code, which says,

6 "No person shall be a member of
7 the Commission who, during the two
8 years prior to appointment on the
9 Commission, received any substantial
10 portion of his income directly or
11 indirectly from any electric utility."

12 I've raised questions about the legal ramifications of that.

13 And to get a memo that lays out in detail the
14 basis of legal reasoning for opposition that never existed, I
15 have to say, is more than a little bit astonishing and of
16 concern to me. So, I don't know how that information came to be
17 reflected in a memo that I've never seen, and clearly the
18 administration has the ability to produce any legal
19 documentation it wishes without sharing it, but it doesn't seem
20 like it's conducive to having a process that's open and gets
21 legitimate issues resolved.

22 There was a request, as I understand it, by the
23 administration for a legal opinion with regard to the nominee's
24 defined benefit pension plan from a holding company. I have
25 subsequently learned that in addition to having a defined
26 benefit pension plan from the holding company, that she also
27 receives a defined benefit plan from PG&E the utility.

28 And I remain concerned about whether or not

1 Ms. Pfannenstiel can meet the requirements of the statute,
2 having nothing to do with her qualifications on the merits for
3 the job, which I think we heard testimony on, but having to do
4 with the provisions of the Warren-Alquist Act, which to the
5 Legislature at times means condition of the statute.

6 I guess I have to ask, Ms. Pfannenstiel, why you
7 think that the receipt of these two pension plans doesn't
8 violate the spirit, if not the letter, of the provision that
9 prohibits an appointment of someone who has received, directly
10 or indirectly, any significant income from a utility?

11 MS. PFANNENSTIEL: Senator Bowen, when that issue
12 was first raised to me, I sought legal advice on that. My
13 understanding had always been that my -- my pension directly
14 from PG&E, because it's a qualifying pension, defined benefit
15 pension, was not considered income. And it certainly is not
16 under the Political Reform Act.

17 The pension from the holding company, I was
18 unclear of how that was, and so that's where we do have the
19 Attorney General's opinion on that. So that, I believed,
20 resolved that part of it, and then the part from the utility,
21 which you had raised, I further sought legal opinion, and that's
22 where I've gotten the opinion from Bill Chamberlain, the Counsel
23 for the Energy Commission.

24 SENATOR BOWEN: I guess that's the document I
25 have that states I'm going to oppose your nomination.

26 Do you know where he would have gotten that
27 information?

28 MS. PFANNENSTIEL: I believe that that

1 characterization was probably an impression he had when I asked
2 him the question. I told him that you and I had been discussing
3 that, and I was concerned about where that might lead. And I
4 think at that point he drafted the memo.

5 SENATOR BOWEN: I think my concern goes far
6 beyond the instant situation.

7 The role of the Rules Committee is to ask
8 questions about the qualifications of any gubernatorial
9 appointee. And the asking of questions should not be deemed to
10 mean that opposition is forthcoming. That's why we ask
11 questions, so that we can make an informed determination.

12 So, I'm extremely disturbed by this.

13 MS. PFANNENSTIEL: Senator, if I might, it could
14 be that when I spoke with Mr. Chamberlain about the issue, I may
15 well have over characterized.

16 As the first time going through this process, the
17 questions that are asked of me I take very seriously. And I'm
18 quite concerned to get the information out there.

19 And whether it is -- I interpreted questioning as
20 being an indicator that there might be opposition, seems to me
21 that I may have mischaracterized when I gave that to Mr.
22 Chamberlain. But if so, it was not intended to be a -- any
23 reference that there was a problem with that. I just really
24 needed that legal opinion.

25 SENATOR BOWEN: I mean, I don't know why I didn't
26 receive a copy of this earlier, but that's just the way this
27 happened.

28 There's been a fair amount of reference to the

1 Attorney General's opinion. As you know, it references a
2 letter, I believe from the Governor's Office, with regard to
3 this situation.

4 But it does not address -- first of all, it has a
5 misstatement of the law with regard to whether or not a holding
6 company is an electric utility under the Public Resources Code.
7 So, I'm concerned that we have an opinion from the Attorney
8 General that's not accurate in terms of its statement of the
9 law. I'd like to get that matter resolved.

10 And second, it doesn't appear to me to address
11 the defined benefit plan from the utility at all. It only
12 addresses the holding company benefit.

13 MS. PFANNENSTIEL: I believe that was the
14 question that was asked, was the question of the defined benefit
15 plan from the holding company, not from the utility.

16 SENATOR BOWEN: I've been handed a copy.

17 MS. PFANNENSTIEL: And the reason for that was
18 our understanding that the defined benefit plan from the utility
19 as a qualifying plan was not considered to be income under the
20 Political Reform Act.

21 SENATOR BOWEN: Right, but as you and I
22 discussed, the Political Reform Act and the Warren-Alquist Act
23 are not the same law. I believe they took effect on the same
24 day. There's no reference in the Warren-Alquist Act to the
25 Political Reform Act.

26 So, I don't know why the assumption is made that
27 the Political Reform Act is the defining law?

28 MS. PFANNENSTIEL: Senator Bowen, if you'd like

1 to get more into the legal analysis, Bill Chamberlain is here
2 and can join me up here, and we can further discuss it, if the
3 Chair would think that would help.

4 CHAIRMAN PERATA: All these people are beginning
5 to steel themselves in the audience.

6 SENATOR BOWEN: No, I think we won't do that at
7 this point.

8 I do have one other question, and it has to do
9 with yet another provision of the law, again dealing with
10 qualification.

11 We had a good meeting about this. You said to
12 me, "Either I'm qualified or I'm not," and I really appreciated
13 that. I thought it was a great, straight forward response. I
14 have a lot of respect for that reply. I thought if everyone
15 were that straight forward, the world would be a better place.

16 This is a difficult question, but I think it has
17 to be asked. The law also references, and let me get the code
18 section, it says,

19 "No member the of the Commission
20 shall be employed by any electric
21 utility."

22 CHAIRMAN PERATA: Senator, which code section?

23 SENATOR BOWEN: It's 25205 of the.

24 CHAIRMAN PERATA: Of the Public Utilities Code?

25 SENATOR BOWEN: Yes, and it references in
26 Paragraph (C), sorry Paragraph (D), it references a situation in
27 which a spouse, minor child, or partner has a direct or indirect
28 financial interest.

1 And the concern has been raised to me that you
2 have a partner who's an employee of PG&E. Since we've been
3 dealing with this conflict of interest in the area of domestic
4 partnership more generally, I wanted to ask your view on whether
5 you have had to recuse yourself on any issues in the time that
6 you've served as a result of your relationship with your
7 partner?

8 MS. PFANNENSTIEL: No, Senator, I have not.

9 My professional relationships are always
10 completely above board. And the recusals that I would make at
11 the Commission relative to PG&E would be more in line with the
12 income I receive through my pension. And there, I have referred
13 to Counsel on a number of occasions when a PG&E item has come
14 up. And they're relatively rare at the Energy Commission, where
15 we're making decisions that directly affect PG&E. And so, I'll
16 refer to Counsel as to whether I need to recuse myself on that
17 basis.

18 SENATOR BOWEN: Is Counsel advising you that a
19 domestic partner does not fall within this definition for this
20 purpose?

21 MS. PFANNENSTIEL: I don't have a domestic
22 partner in that sense, Senator.

23 SENATOR BOWEN: Well, I know you don't have a
24 registered domestic partner, but --

25 CHAIRMAN PERATA: You don't need to respond.
26 Any further questions?

27 SENATOR BOWEN: I'd like to get the Attorney
28 General's opinion cleaned up to reflect at the very least an

1 accurate description of the holding company issue, so that we
2 don't have that floating around, before this is taken up on the
3 Floor.

4 CHAIRMAN PERATA: We'll do that, absolutely.

5 SENATOR CEDILLO: But isn't the central question,
6 though, not the applicable law, but rather the status of defined
7 benefit plans, whether or not they're property rights and not
8 income for this purpose, rather than what law applies, or what
9 is the standing of the various companies, but really the
10 question of whether or not pensions are property rights that
11 people have.

12 They're not considered benefits. Therefore, as
13 if it were a real property right asset, it would not be
14 considered a deterrent within both the spirit and letter of the
15 Alquist law.

16 SENATOR BOWEN: I guess that's a third
17 interpretation.

18 SENATOR CEDILLO: Because I have a keen interest
19 in making sure that all Mr. Alquist's laws are followed to their
20 letter and spirit.

21 I think that is really the question that's before
22 us.

23 SENATOR BOWEN: That's a different legal
24 interpretation altogether.

25 It does seem to me that we ought to look at
26 clarifying. The Warren-Alquist Act is fairly unique. I'm not
27 aware of any other appointed position where there is this kind
28 of a prohibition. There should be for PUC commissioners, in my

1 view, but there isn't one. The Governor vetoed that bill last
2 year.

3 CHAIRMAN PERATA: We'll certainly explore that,
4 at least the AG's opinion.

5 And as to why you didn't receive that, my
6 apologies. I don't know.

7 Any further comments? A motion's in order.

8 SENATOR BATTIN: Move her confirmation.

9 CHAIRMAN PERATA: Moving the nomination, call the
10 roll, please.

11 SECRETARY WEBB: Senator Ashburn.

12 SENATOR ASHBURN: Aye.

13 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

14 SENATOR BOWEN: Aye.

15 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

16 SENATOR CEDILLO: Aye.

17 SECRETARY WEBB: Cedillo Aye. Senator Battin.

18 SENATOR BATTIN: Aye.

19 SECRETARY WEBB: Battin Aye. Senator Perata.

20 CHAIRMAN PERATA: Aye.

21 SECRETARY WEBB: Perata Aye. Five to zero.

22 CHAIRMAN PERATA: Congratulations.

23 MS. PFANNENSTIEL: Thank you.

24 CHAIRMAN PERATA: The printed agenda, we're
25 going to juggle that around a little bit. We're going to take
26 Ricky Gill next -- excuse me -- actually, Ricky, sit down.

27 I've got a better idea. Rob Manwaring, who is
28 the K-12 legislative analyst, is here. What we've asked him to

1 do, this is a little unusual, but he's representing the
2 Analyst's Office. And his expertise in K-12 issues, I believe,
3 would be instructive on the next three nominees, specifically a
4 brief summary of the K-12 governance, the relationship between
5 the Board of Education, the Superintendent of Public
6 Institution, and the Secretary of Education -- that's why
7 Superintendent O'Connell is here to defend himself, or is it to
8 learn what that relationship is, Jack -- the Federal No Child
9 Left Behind Law, and the High School Exit Exams.

10 So, Mr. Manwaring.

11 MR. MANWARING: Thank you very much, Mr. Chair
12 and other Members of the Committee.

13 I'm Robert Manwaring from the Leg Analyst's
14 Office. I was asked by staff to briefly make a presentation,
15 and I'll try to go through this quickly, although it looks
16 rather lengthy, to discuss some of the difficult issues that
17 members of the state board face. Most of these they've just
18 inherited with the job.

19 On the first page of the handout, I was asked to
20 talk about state-level governance in K-12. It continues to send
21 mixed messages to schools. There is: a State Board of
22 Education which is appointed by the Governor; a Superintendent
23 of Public Instruction who is elected by the people and is the
24 Executive Officer of the State Department of Education; the
25 Governor and the Secretary for Education set the Governor's
26 policies; and then there's the Legislature, who appropriates
27 funds and sets their policy agenda as well.

28 So, with all of these conflicting state-level

1 agencies, it's often difficult to implement long-term visions
2 for education policy. There have been numerous recommendations.
3 The last one by the Legislature was the K-12 Master Plan
4 Committee, and they recommended changing the role of the
5 Superintendent and having a Secretary of Education administer
6 education in the state. We've made similar recommendations, and
7 the California Constitution Revision Commission has also made
8 recommendations in changing state governance.

9 Given that this board is stuck with the current
10 governance structure, there is an important emphasis of
11 communication and coordination among these multiple state
12 players. Two examples of issues that this board will face in
13 the next year include coordinating policies around school and
14 district interventions and sanctions, and special education
15 provisions of the High School Exit Exam. In both of these areas
16 there will be difficult decisions that the Legislature will be
17 asked to implement legislation around, appropriate funding for,
18 to implement policy agendas that the board may have as well as
19 the Governor.

20 So, there's oftentimes the situation where there
21 needs to be a coordination of effort among these multiple state
22 agencies.

23 On the second page of the handout, I want to
24 briefly talk about the conflicting approach of our state
25 accountability system for schools, and the federal
26 accountability system for schools.

27 The State Board of Education is put in charge of
28 implementing the federal what's called the No Child Left Behind

1 Act, and it's important to understand how very different that is
2 from the state system that this Legislature put in place in
3 1998.

4 The state system is the called the Public School
5 Accountability Act. It has some main components, and the main
6 one is the Academic Performance Index, which is often very
7 accessible to the public. It provides each school with a
8 ranking 1 to 10. It provides a level of achievement, and it's
9 also a growth model. It really compares a school, on a
10 year-to-year basis, to how that same school did in the prior
11 year, and expects continual growth for every school in the
12 state.

13 Page Three in the handout shows how the federal
14 system very much differs. It sets one bar for every school in
15 the state, and it's a static bar that every child must then get
16 above that level of proficiency. That bar is then ratcheted up
17 over time until 100 percent of kids are achieving at some level
18 of achievement. This more of a status model creates some
19 difficulties because really it focuses all the attention around
20 those kids right near the bar, whereas, the state system really
21 focuses on all of the kids.

22 What we focus on in the chart on Page Three are
23 really some of the sanctions that schools face if they're not
24 making the achievement gains that the federal law has
25 established.

26 CHAIRMAN PERATA: Excuse me.

27 "Sanctions" is a nice, antiseptic word. What
28 does it mean?

1 MR. MANWARING: Sanction, it gets more draconian
2 as schools continue --

3 CHAIRMAN PERATA: Another interesting word. Give
4 me an example.

5 MR. MANWARING: The most extreme would be school
6 closure, or eliminating -- reassigning or eliminating staff.
7 Those would be the most severe.

8 It starts off with school choice, which is really
9 giving students the ability to move among schools within a
10 district. Basically that didn't add a lot, because that was
11 already part of state law.

12 Supplemental services is providing additional
13 tutoring services to students.

14 CHAIRMAN PERATA: Paid for by?

15 MR. MANWARING: Paid for by federal funds that
16 are allocated to the school district.

17 When it starts to get to the lower ones,
18 corrective action and restructuring, this is where real change
19 is forced upon the schools.

20 And what's going to be difficult about this law
21 is that some of these schools may be deemed failing under the
22 state system, but some might be quite successful. If you look
23 at some of the schools that are currently failing, there's many
24 schools in deciles 7 through 9. So, the highest ranking levels
25 of our state system that are actually deemed failing under the
26 federal law.

27 That is definitely a difficulty, and it's really
28 in the restructuring year where schools have to either -- they

1 have to take some major reforms. And some schools are starting
2 to hit this. There's about, if you turn to the next page, Page
3 Four, you can see where schools are in this ranking. And it's
4 really the Year 4 schools where you have over 250 schools that
5 are facing major restructuring in the current year that you
6 start to question what is the state going to do about assisting
7 these schools in these difficult restructurings.

8 There is a state law that was passed last year to
9 help start intervening in districts that are failing. That's a
10 second component that is much more difficult, and where the
11 state has the direct and active role. The state must intervene
12 in any school district that's deemed to be failing. And that is
13 currently an area of contention between the State Board in the
14 way the State of California has implemented this policy, and
15 requirements of federal law. And there's some negotiations
16 going on with the Federal Department of Ed around district
17 interventions.

18 Page Five of our handout shows how these
19 standards are going to ratchet up over the next several years.
20 For the current year, there is a significant increase in the
21 number of kids that must be proficient. We have set a bar that
22 was higher than any other state in the nation. We've set the
23 highest expectations for what our students achieve to become
24 proficient. And in the '03-04 fiscal year, we only assume that
25 14 percent of students would meet that target.

26 Now, if you go back to the prior page, you get a
27 sense of 1600 schools could not achieve that level of
28 proficiency, when we only expected 14 percent of kids to be

1 proficient.

2 In the current year, that percentage is ratcheted
3 up to 24 percent. So now, while we had 1600 schools that failed
4 when the bar was only at 14 percent of kids proficient, as we
5 increase the expectations for schools, the number of schools in
6 the state that will fail under the federal law will grow to a
7 vast majority of the Title I schools.

8 Page Six, we point out some key differences
9 between our state system and our federal system. The federal
10 system is basically measuring one level of achievement and
11 really focuses attention right around the kids that are right
12 near that target. We've set a target that basically has kids
13 that are on track to go to UC or CSU, and so effectively what
14 the federal -- our interpretation of the federal law has been a
15 focus on getting those kids that are close to going to college
16 ready to go to college.

17 Unfortunately, the unintended consequence of that
18 may be that schools do not focus on the lower half of the
19 children in this state, that by ignoring those kids and
20 redirecting resources to the kids near the bar is the best
21 approach to deal with this new federal law.

22 That has had our office concerned, and also a
23 liaison team that advised the State Board on implementation of
24 the federal law, that the recommendation that liaison team was
25 to link the federal law to that state's High School Exit Exam,
26 because that is something that the Legislature has established
27 as a target that they want all children to achieve prior to
28 leaving high school.

1 Page Seven of the chart is turning to the other
2 difficult issue that this State Board faces, and that's the High
3 School Exit Exam. By 2006, for the Class of 2006, every student
4 graduating from high school will have to pass a state test. The
5 results on Page Seven are the results of 10th graders. You'll
6 notice that just over -- around 65 percent of kids have passed
7 that test.

8 That raises the question of what is the state
9 going to do for the other 35 percent that haven't passed this
10 test? They will have numerous additional opportunities in their
11 11th and 12th grade year to retake that test, and there are
12 state-mandated interventions that school districts have to
13 provide every student that has failed this test.

14 But as you look for some of the more difficult to
15 serve kids, namely English learners and special education
16 students, the state is going to face very much of a difficulty
17 of getting these kids ready to pass the High School Exit Exam.

18 Exit Exams are highly litigious tests, and to my
19 understanding, every state that has created a High School Exit
20 Exam has been sued over it. A lot of it triggers around the
21 issue of opportunity to learn.

22 That's actually one of the highlights of
23 California's implementation, is that based on a survey done by
24 an external evaluator, 90 percent of kids taking the test
25 suggested that they had been exposed to all the material that
26 they were tested on. So, that's encouraging news.

27 In addition, for English learners it was
28 encouraging that students that have transferred and developed

1 English skills that reclassified them to fully fluent actually
2 passed better than the general student population. So, if
3 schools are doing what they should do in transitioning English
4 learners to fluency, those kids are able to pass the High School
5 Exit Exam.

6 But we've done some research that shows that
7 oftentimes, kindergartners starting as English learners, only
8 half of them have transitioned by the 6th grade. So, this state
9 has not done a very good job of transitioning kids into fluency.

10 With that, I'd be happy to answer any others
11 questions that Members of the Committee may have.

12 CHAIRMAN PERATA: Thank you.

13 Now Mr. Gill, as you probably know, we didn't
14 have to confirm you, but we did want to. And you acquitted
15 yourself quite nicely a few weeks ago. Taught me quite a bit
16 about civics that I didn't know.

17 So, what I'd like to offer you is an opportunity
18 to make a brief statement, and I think Jack is going to grade
19 your statement, and then you can go.

20 [Laughter.]

21 MR. GILL: I can tell you pass as a teacher. You
22 definitely put me in my place by telling me to go back to my
23 chair. I feel like I'm in the classroom already.

24 CHAIRMAN PERATA: I don't want you to forget what
25 it's like.

26 MR. GILL: That's right, thank you.

27 Mr. Chairman, Members of the Senate Rules
28 Committee, distinguished guests, it is truly a privilege to

1 speak before you today.

2 Serving as the student member on the California
3 State Board of Education has been an incredible honor and
4 without a doubt, the most intellectually stimulating experience
5 of my life.

6 As the youngest son of immigrant physicians, I am
7 fully aware of the prominent role education has played in the
8 fruition of my family's American dream. Fundamentally,
9 education is the great equalizer of any free society, and in
10 this light, I believe we as law makers and policy makers must
11 jointly strive to preserve and promote public education.

12 The wonderful power of having an education cannot
13 be quantified. It represents the only sure-fire means to
14 achieving the social mobility to which so many of our fellow
15 Americans aspire.

16 My service on the State Board has been predicated
17 upon respecting the ambitions of our youth, for it is their
18 awesome responsibility to advance California far into the
19 future.

20 In order to enact meaningful education reform,
21 leaders in Sacramento must recognize schools first and foremost
22 as centers of learning. In essence, as advocates of public
23 education, our core constituency must be California's 6.3
24 million K-12 students.

25 As that student voice, I feel honored to express
26 their hopes and address their concerns within the forum of the
27 State Board of Education. During my brief tenure, I am proud to
28 say the State Board has taken bold strides to improve student

1 achievement in California. This student-focused approach has
2 yielded us the Williams settlement, the continued support of
3 statewide assessment and accountability models, and approval of
4 certain district reorganization and charter school proposals.

5 The consistency of the Board sponsored standards
6 based reform symbolizes the common thread that will result in
7 every California student receiving a fair, equal, and world-
8 class education. I am unabashedly enthusiastic about
9 California's future because of the past and present Board
10 leadership's commitment to educational excellence.

11 Serving along side these fine individuals has
12 been both inspiring and exciting. I have learned so much from
13 my colleagues, most recently that principled leadership can
14 sometimes elicit ridiculous consequences. I can attest to my
15 fellow board members' strength of character and depth of
16 conviction toward public education.

17 In closing, although differences on issues may
18 arise, I am confident our shared dedication to California's
19 students will always unite us.

20 I humbly appreciate the Senate Rules Committee's
21 consideration of my confirmation as a member of the California
22 State Board of Education. Thank you, Mr. Chairman, and thank
23 you Members.

24 CHAIRMAN PERATA: I was wondering, what are you
25 doing when you graduate?

26 MR. GILL: I actually want to become a physician.
27 I think that's the purest way to serve, and hopefully attend
28 medical school somewhere. Someday, hopefully I can consider

1 that as part of my future.

2 CHAIRMAN PERATA: If you need a recommendation,
3 come look us up.

4 MR. GILL: Thanks so much, Mr. Chairman.

5 I'd be pleased to answer any questions, should
6 there be any.

7 CHAIRMAN PERATA: Thank you for what you've done.

8 MR. GILL: Thank you very much.

9 SUPERINTENDENT O'CONNELL: Mr. Chairman, just
10 briefly, I'll make a brief two paragraphs on each of the three
11 members, including Mr. Gill, Ms. Bloom, and Ms. Reiss, three
12 outstanding candidates. I had an opportunity to serve with them
13 on the board now for nearly a year.

14 The Governor clearly made some right choices on
15 these three individuals. They work very well together,
16 collaboratively. Always do their homework. None has missed a
17 meeting. They've just really been a treat to work with. Good
18 insight on policy.

19 Each brings unique perspective. Obviously,
20 Mr. Gill, outstanding advocate for the 6.4 million students that
21 he so well handles himself with here.

22 Ms. Bloom, a former teacher, well connected with
23 higher education as well, high expectations, high standards for
24 all of our students.

25 And Ms. Reiss has just been a strong advocate for
26 public education for her entire life. Great on some of the
27 preschool issues and with experience there as well, and has
28 helped us with the linkage and the bridge to the Governor's

1 Office. So, if there are particular issues that the Governor's
2 Office wants, I think we've been able to address many of those
3 concerns as well.

4 All three have worked very well together with the
5 entire board. The Governor's made some very good appointments
6 to the State Board. I wanted to come over and just express my
7 strong support for all three.

8 CHAIRMAN PERATA: Thank you, Superintendent. We
9 appreciate that.

10 SUPERINTENDENT O'CONNELL: Thanks, Mr. Chairman.

11 CHAIRMAN PERATA: Since I want Ms. Reiss to go
12 back to work, earn her big salary, we're going to call you up
13 first, Bonnie. If you'd come forward.

14 SENATOR MALDONADO: Mr. Chair, Mr. President,
15 I'm here to introduce --

16 CHAIRMAN PERATA: Senator Maldonado, welcome.

17 SENATOR MALDONADO: I'm not sure what the
18 protocol is. Would you like me to go first or Bonnie?

19 CHAIRMAN PERATA: We'd like you to introduce her,
20 please.

21 SENATOR MALDONADO: First of all, Mr. President
22 and colleagues, thank you very much for this opportunity. I'm
23 honored to be here to introduce Bonnie, and to lend my strong
24 support for my friend for this confirmation as a member of the
25 State Board of Education.

26 I'm also glad to see Jack here. Jack and I have
27 worked very closely together in my career, and hopefully those
28 joint efforts will propel here to get Bonnie confirmed to this

1 board.

2 CHAIRMAN PERATA: I think he literally had his
3 life in your hands; is that correct?

4 SENATOR MALDONADO: We won't go there,
5 Mr. President.

6 I know that Bonnie will make an excellent choice
7 for the State Board of Education for many reasons. First,
8 Bonnie does her homework. Bonnie is a hard worker, her resume
9 shows that. And her work in the Capitol this past year proves
10 it.

11 Bonnie has devoted herself to our students in
12 improving their opportunities for learning in California. She
13 understands the challenges facing our students that are in
14 economically disadvantaged schools. She understands those who
15 are English learners, and she knows that they need to be
16 prepared for a future in the competitive job market in
17 California.

18 The second reason is that Bonnie is a team
19 player. I always say that if you don't worry about who gets the
20 credit, you'll get the job done. Bonnie knows that for our kids
21 to succeed, we need to work together and be willing to listen to
22 each other to consider new ideas.

23 I know many of you know Bonnie, and we know that
24 Bonnie know listens to everyone. If you have a suggestion for
25 improvement, you can share it with her. She will listen.

26 While she has strong personal convictions and
27 standards, she also has an open mind and is willing to hear from
28 parents, students, teachers, administrators, and even us, my

1 colleagues in the Legislature.

2 The third and final reason I'm here to present
3 Bonnie Reiss to you is that schools in my state are the most
4 important investment for us. We need as members of the Board of
5 Education those who believe in the investment, that will devote
6 themselves heart and mind to California's students and their
7 future, using their intelligence, their imagination, their
8 creativity, and time to ensure that our investment is well spent
9 in California.

10 I know Bonnie Reiss will do her best for our
11 schools and students. And I know that Bonnie will use her
12 extraordinary efforts to make it a better place. She has worked
13 very, very hard her entire life, and I know now that she's doing
14 what she does best: give back to our community to make a
15 difference.

16 Thank you, and I urge you my colleagues to
17 support Bonnie for State Board of Education.

18 MS. REISS: Thank you, Senator Maldonado.

19 I have a brief statement to read to open up here,
20 and then some people here to speak in support.

21 Thank you, Mr. Chairman and Members of the
22 Committee. I appreciate your time and your consideration of my
23 confirmation as a member of the State Board of Education.

24 Serving on the State Board of Education is a
25 tremendous honor and a tremendous responsibility. Having served
26 on the State Board for almost one year has been an extremely
27 rewarding experience, offering much insight into the variety of
28 issues and challenges facing school districts throughout our

1 state.

2 Recognizing that the State Board is the governing
3 and policy making body of the California Department of Education
4 that is responsible for setting standards, instructional
5 materials, assessment and accountability, adopts textbooks,
6 adopts regulations to implement legislation, and grants waivers
7 to the Education Code, I believe that this is one of the most
8 important boards in this state, and one I pledge to commit fully
9 to.

10 I believe that my life and work experience
11 provide me a useful point of view as a State Board member. My
12 legal and accounting background aid me in reviewing complicated
13 issues, especially involving financial issues, regulations, and
14 waivers.

15 For 10 years I ran a nonprofit national
16 after-school organization which provided inner city children
17 with comprehensive programs. I traveled throughout California
18 and to 10 other states, working with hundreds of public schools
19 and education leaders.

20 In recent years, I worked with the Los Angeles
21 Unified School District with their Beyond the Bell Program to
22 create a model after-school program for four middle schools in
23 the lowest decile and most underserved communities.

24 In the past year, I have had the rare honor to
25 serve as Senior Advisor to the Governor, which has given me an
26 amazing education on the legislative process, on a wide variety
27 of issues facing our state.

28 I must say that from my point of view, as

1 complicated as some of the our state's challenges are, whether
2 budget, workers' compensation, or energy, that education is by
3 far the most challenging. We have over 6 million students, 25
4 percent of them English learners; over 1,000 school districts;
5 some large schools with over 4,000 students; we have a shortage
6 of qualified teachers; far too many schools and districts not
7 performing adequately; a population of special ed students we
8 are still not serving as well as we should.

9 We have state requirements and federal No Child
10 Left Behind requirements, and a governance system that is
11 complicated and confusing at best, and dysfunctional at worst.

12 On the positive side, we have adopted some of the
13 best standards in the country, and are aligning our curriculum
14 books and tests to these standards.

15 We have many exceptional students, schools,
16 teachers, and principals. We have a high school that is a
17 two-time winner of the National Academic Decathlon. And just
18 last week the Advanced Placement Test results came out with
19 California scoring well above the nation, ranking us the fifth
20 top performing state.

21 I believe that our focus needs to be on closing
22 the achievement gap, focusing on the lowest performing schools,
23 and those populations of students not performing well.

24 I believe that the State Board can play a very
25 important role in improving education for all California
26 students, and I hope to bring a passionate commitment, strong
27 and open mind, and much heart to this task.

28 Thank you.

1 I also wanted to make a comment that last week
2 when I -- thank you to Senator Bowen, when I had the chance to
3 meet with Senator Bowen about this, and we talked about
4 education issues, one of the issues that you raised that you
5 were concerned about was hearing about the regulations that were
6 being done by the State Board of Ed on the complaint procedure,
7 and that there were concerns about that.

8 So, I immediately called the legal counsel and
9 Director of the State Board of Ed, and they said they, too, had
10 heard those concerns, and therefore that's why they're pulling
11 it, and they're actually going to be reworking those regulations
12 so that it could be worked out to everyone's satisfaction.

13 I just wanted to comment on that as well.

14 CHAIRMAN PERATA: Thank you.

15 There are a few people who want to come here and
16 speak.

17 Honorable Mr. Steinberg, how are you?

18 MR. STEINBERG: Good to see you, Senator Perata,
19 and good to see all of you.

20 It's one of the rare times I've been back in the
21 Capitol since I left. And I came back because I wanted to
22 strongly urge the Committee to support the nomination of Bonnie
23 Reiss for confirmation for the State Board of Education.

24 I had the privilege to get to know Bonnie last
25 year during the transition in our executive branch. And we were
26 immediately, of course, confronted with a number of challenges
27 around the budget. And I had the opportunity to work very
28 closely with Bonnie in negotiating, helping negotiate,

1 Propositions 57 and 58, and then later in the year on many
2 aspects of the budget, especially those parts where we were
3 actually able to achieve consensus.

4 Bonnie is a person of incredible intellect,
5 boundless energy, and she is a problem solver. She was my
6 primary go-to when came time to see if, at least from the
7 Assembly side, we could reach resolution on some of the most
8 vexing issues we faced last year.

9 I am happy that she is in state government, and
10 that she has taken the time out of her professional life to give
11 this service. And I know regardless of the policy agreement or
12 disagreement, she's someone who approaches everything she does
13 with the utmost integrity, and with the desire to try and find
14 the middle ground where ever possible.

15 And finally I would say that even though the
16 issues I'm about to refer to were not quite as high profile,
17 when the Governor last year restored \$18 million dollars' worth
18 of funding for the Child Welfare Services, an often forgotten
19 issue, or the resources for AIDS patients out of the ADAPT
20 Program, it was not only due, of course, to the Governor, who
21 had to obviously make the ultimate decision, but it was Bonnie
22 who saw the human need, saw vulnerable people and vulnerable
23 populations, and went to work to make sure that those people
24 were served.

25 And I'm very happy to be here today to strongly
26 recommend her nomination. Thank you.

27 CHAIRMAN PERATA: Thank you, sir.

28 Yes, sir.

1 MR. LEICHTY: Thank you. Mr. Chair, Members of
2 the Committee, good afternoon. My name is John Leichty, and I
3 want to take this time to thank you for providing me the
4 opportunity to not only be here speak to the support of the
5 confirmation of Bonnie Reiss for the State Board of Education.

6 As the Associate Superintendent for the Los
7 Angeles Unified School District responsible for extended day
8 programs, which includes after-school as well as all the
9 intervention programs, I've had the opportunity to not only come
10 to know Bonnie Reiss over the last five years in my work, but
11 I've witnessed first-hand on a day-to-day basis her outstanding
12 qualities.

13 Ms. Reiss has provided leadership, the
14 dedication, the commitment, and the experience that has resulted
15 in a national model after-school program for middle school kids
16 in Los Angeles. And I'm here today not only to thank her for
17 that work, but also to commend her, and commend her to you
18 because this did not happen without a lot of hard work.

19 Bonnie Reiss took a concept, an idea, and she not
20 only took it -- which many people can do; they can describe
21 something they want -- but she spent the time, the energy, the
22 dedication and stayed focused to bring it to fruition.

23 The after-school program in Los Angeles has grown
24 ten-fold in the last five years. The model that Bonnie and her
25 team helped us with and put together, there's no question a
26 model for young people. That program today in Los Angeles
27 serves thousands of young people and their families, and it's
28 one that I'm hopeful over next decade or two would become

1 nationwide.

2 Bonnie not only brings experience, she brings a
3 sense of enthusiasm, a sense of energy, and a sense of passion.
4 She believes in all children.

5 And finally I need to say to you, she stays
6 straight on the task. There's tendency in the field of
7 education to use young people oftentimes as a leverage for adult
8 agendas, and Bonnie has the capabilities of staying focused on
9 student needs.

10 And so I, as a colleague, am here to support her,
11 and I would hope that you, as policy makers and our leaders,
12 would give her your support.

13 Thank you very much.

14 CHAIRMAN PERATA: Thank you.

15 MR. ROSENBAUM: Good afternoon, Mr. Chairman,
16 Senators. I'm Mark Rosenbaum. I'm Legal Director of the ACLU
17 of Southern California in Los Angeles.

18 The ACLU does not support or oppose candidates,
19 so I'm really here to share with you experiences that I've had
20 with Bonnie, most particularly in the Williams case. I was one
21 of the lead counsels in that case, and I want to share with you
22 the context in which I had an opportunity to work with Bonnie
23 Reiss.

24 Let me state a little background. I know most or
25 all of you are very familiar with that case. We filed it to
26 ensure that all California school kids had equal access to the
27 most basic tools of learning: textbooks, qualified teachers,
28 decent school facilities.

1 We had spent close to a year going up and down
2 the state, and what we found was that substandard conditions
3 weren't limited to a few troubled districts, a few urban
4 districts, but rather they crossed the state, in rural
5 communities as well as suburban and urban communities.

6 The conditions we found were almost impossible to
7 believe. We commissioned a poll. We found that ten percent of
8 all teachers in this state, teachers teaching some 620,000
9 students, didn't have enough textbooks for their kids in class.
10 One-third of those teachers, teaching approximately 2 million
11 students, didn't have enough textbooks to send home for students
12 to do their homework.

13 As you know, the Senate Committee on Education
14 found that at least one-third and perhaps as many as two-thirds
15 of all kids didn't have adequate instructional materials.

16 We found that 77,000 English language learners
17 received no English language learning instruction whatsoever.
18 That was one out of every 20 English language learners
19 statewide. The Department of Education itself said that there
20 were 205 districts around the state in which 10 percent or more
21 of the district's English language learners weren't receiving
22 any instruction whatsoever.

23 We found that there were 1794 public schools that
24 operated with 20 percent more teachers who lacked full
25 nonemergency teaching credentials. And we found that there were
26 a thousand school sites in 47 districts across the state that
27 were critically overcrowded; students, primarily Latino, in
28 so-called Concept Six schools, where they lost up to 17 days of

1 school a year.

2 We found furthermore that the conditions that I'm
3 talking about were not evenly distributed among the kids in this
4 state, that there were gross and severe disparities by race and
5 by income status: 83 percent of teachers who worked at schools
6 that had small percentages of low-income students, they had
7 access to textbooks; whereas, 57 percent of teachers who worked
8 at schools with large populations of low-income students and
9 students of color did not have access to those teachers [sic];
10 74 percent of teachers who taught Latino and black students said
11 that they lacked sufficient textbooks for students to use for
12 homework.

13 We brought this suit because of those conditions,
14 and the results that were not surprising as a consequence. As I
15 think you all know, one of the most recent NATE results, the
16 National Testing results, showed that California in reading
17 ranked 38th out of 40 states; 83 percent of white students
18 passed the English Language Arts section of the High School Exit
19 Exam that you heard about a few moments ago, but only 56 percent
20 of black students, 53 percent of Latino students, and 51 percent
21 of low-income students.

22 The graduation rates in this state at the time of
23 that lawsuit were shocking. Whereas 77 percent of white
24 students were graduating, that number shrunk to 58 percent of
25 black students, and 58 percent of Latino students, and those
26 numbers may be conservative.

27 We filed the Williams case in response to those
28 conditions, and we did it in a very deliberate sort of way. We

1 pointed no fingers at any administration, and in particular the
2 prior administration. We hoped as a result of the filing of
3 that case and those conditions that the resources of the prior
4 administration would come together with Legislators, with the
5 state's education establishment, to develop practical, workable
6 solutions to the state's most pressing crisis: its
7 expendability of children, particularly low-income children and
8 children of color.

9 But we were met with a response that was
10 historically unparalleled in this state. The prior
11 administration opened up its checkbook, spent over \$20 million
12 to hire a law firm to take the position that the State of
13 California had no responsibility -- no responsibility
14 whatsoever -- to assure equal educational opportunity. It took
15 the position that children did not need books.

16 When I spoke to the lead lawyer on the other side
17 and said, "Why shouldn't children have books?" He said, "Why
18 should they have books; they can't read anyhow."

19 When I asked him why the state would not settle
20 on that condition when he told that that was possible, he asked
21 me why men climb Everest.

22 The state's lawyers conducted eight-hour
23 depositions of young children, some of them eight hours a day
24 for up to three days, asking them questions like, "Does it
25 really disadvantage you to have rats in your classroom? Explain
26 to me the reasons why that negatively affected your education?"
27 And then turned around for the first time in the history of
28 this country and sued individual districts, saying that the

1 state had no responsibility; it was all the problem of
2 individual districts, all the while spending tens of millions of
3 dollars.

4 And we were prepared, if we had to, to fight it
5 out, to take years of battles.

6 Shortly after this administration took office, I
7 spoke with Bonnie Reiss about the case, and she told me several
8 things. The first thing she told me at a meeting in Santa
9 Monica-- it's never really been revealed before -- the first she
10 said to me, that the Governor and she, when they first heard of
11 this lawsuit, recognized that the allegations were true. And
12 she said that this administration, and she said you can count on
13 her, would not deny or conceal the truth. She said this
14 administration would step up to its responsibilities to the
15 state's children, that as part of the Governor's programs before
16 he became Governor, she had been in many of the schools that
17 were the subject of our lawsuit, that she had seen the
18 conditions we had described over and over. She told me that she
19 had not sought the position of Senior Advisor, but that a
20 principal reason she accepted it was so that she could have a
21 hand to change those conditions.

22 She leaned forward and she clapped her hands
23 together. And she said, "This is a scandal. This is a waste of
24 our children's potential. We're not going to tolerate this."

25 And then Bonnie set about to convert the suit,
26 the lawsuit, from an object of shrill adversarialness and court
27 room hostility, all at great taxpayer expense and certainly
28 expense to the kids, to an opportunity for reform and hope.

1 In over 30 years of my practice, this is perhaps
2 the most complex case that I had ever litigated. Yet I had
3 never witnessed so deft and rapid a transformation of a piece of
4 litigation. And Bonnie was unquestionably the prime architect.
5 She was not alone. There are members in this room who were
6 involved; there are individuals in the education establishment
7 that were involved, but she was the indispensable person to
8 change that condition.

9 As part of the seismic shift from antagonism on
10 the part of the state to reflection of the needs of its school
11 districts and its children, in a cooperation and a set of mutual
12 efforts, Bonnie brought together all the disparate parts of our
13 state's educational community, the various parts of the
14 governance you've heard and more: the State Board, the
15 Department of Education, the Superintendent of Public
16 Instruction, Cabinet officials, district superintendents,
17 teachers' unions, Department of Finance, Members of the
18 Legislature, their staff, teachers and students.

19 She was, as far as I could tell, engaged in this
20 process such that all concerns and all ideas could be aired,
21 could be treated in a respectful manner so as to forge a
22 solution that would be sound educationally and would serve the
23 needs of precisely those children who had been denied too long,
24 and the professionals who had devoted their lives to trying to
25 educate these kids in an appropriate manner.

26 That's not to say that the process of negotiation
27 went entirely smoothly. And I want to tell you that there were
28 many moments when it came very near collapse. But whenever the

1 negotiations teetered on self destruction, it was Bonnie more
2 than anyone else I know of who worked those participants.
3 And if you've ever been worked by Bonnie Reiss, you don't want
4 that to happen for very long. She reminded all of us of the
5 stakes involved in this matter coming apart, and she insisted
6 that the needs of the children be served.

7 Finally, and this is maybe what I'll remember
8 most about Bonnie's actions, at the end of the process when we
9 had achieved a settlement, and when this Legislature had stepped
10 up in an almost unanimous fashion worked to assure that it
11 became part of the law and the fabric of this state, when
12 congratulations were being handed around, what I'll remember
13 most is that Bonnie came up and she apologized. She apologized
14 that she could not do more, and then she pledged that this
15 legislation and this settlement was just a beginning.

16 In my experience with her in this case, Bonnie is
17 the best advocate, the best advocate, for those children who
18 have been most neglected that we could hope for in this
19 administration. And I'm proud for the opportunity to have
20 worked with her on that case.

21 Thank you very much.

22 CHAIRMAN PERATA: Thank you, sir.

23 Anybody else want to follow that?

24 MS. ACKERMAN: Good afternoon, Senator Perata
25 and Members of the Committee. My name is Arlene Ackerman, and I
26 am the Superintendent of San Francisco's public schools.

27 I am here today to support the nomination of
28 Ms. Bonnie Reiss to the State Board of Education.

1 I have been an educator, working in urban school
2 districts, for more than 30 years of my life, including
3 experiences for more than 20 years as a classroom teacher and
4 school principal. As Superintendent of the San Francisco
5 Unified School District and the San Francisco County Office of
6 Education, I oversee and direct the academic and operational
7 activities all K-12 education programs in the City and County of
8 San Francisco. I have made a life-long commitment to public
9 schools and to increasing academic achievement for all children.

10 Throughout my career in education, I have had a
11 unique opportunity meet and work with outstanding people all
12 over this country who apply their considerable talents to serve
13 the best interests of public school students.

14 Senators, Bonnie Reiss is one of these people. I
15 met Ms. Reiss about one year ago during a meeting to discuss
16 educational issues impacting our large urban school districts.
17 On this and subsequent occasions, including negotiations on the
18 Williams lawsuit, I developed a deep appreciation for Ms. Reiss'
19 commitment to California's public schools. I have found
20 Ms. Reiss to be an extremely quick study on the problems and
21 challenges facing California's schools, including issues
22 regarding underperforming schools, the state and federal
23 underperforming school accountability system, school finance and
24 funding, as well as school-based decision making and teacher
25 quality.

26 I have come to know Ms. Reiss as a fair,
27 constructive thinker who is open to creative ideas and who is
28 always focused on solving problems. For example, she listened

1 carefully to concerns that I raised, as well as my colleagues,
2 during the Williams discussions and worked incredibly hard, I
3 believe, to help achieve the eventual settlement.

4 Ms. Reiss possesses both a healthy appetite for
5 policy details as well as a hard-nosed practical instinct for
6 achieving results, both of which I appreciate. And I appreciate
7 especially these qualities in policy makers.

8 And I certainly believe that they will serve
9 Ms. Reiss well as a member of the State Board. Anyone who is
10 involved in public education in California knows that we
11 sometimes find it easier to agree on our problems rather than on
12 the appropriate cures or solutions. Legislators, Governors, PTA
13 members, educators, parents, and superintendents often see
14 policy prescriptions differently on issues ranging from adequate
15 funding to accountability.

16 In the midst of these sometimes strenuous
17 debates, we rely on the State Board of Education to make
18 extremely important decisions that affect the success of every
19 one of California's 6 million public school students.

20 I know that some of the Board's decisions will be
21 more popular than others. I myself fully expect to applaud some
22 decisions and perhaps scratch my head over others.

23 I do know one thing, however, that it is
24 reassuring to see individuals who are intelligent, reasonable,
25 and as effective as Bonnie Reiss shaping state education
26 policy. I sincerely hope you and your colleagues will support
27 her nomination to serve on the State Board of Education.

28 And I really thank you for your time and

1 consideration today.

2 CHAIRMAN PERATA: Thank you for being here,
3 Superintendent.

4 MR. MITCHELL: Mr. Chairman, Senators, my name
5 is Ted Mitchell. I'm the President of Occidental College, and
6 it's a pleasure to be here and to add my voice to those who have
7 gone before in support of Bonnie Reiss' nomination.

8 I've known Bonnie throughout her time and service
9 to the Governor and before that for her extraordinary leadership
10 in creating and sustaining perhaps the most remarkable
11 after-school program this country has seen.

12 It's an interesting point of connection for many
13 policy reformers for many years. There was a temptation to give
14 up on the school day and the school program and say, well, we'll
15 surrender that as hopeless terrain, and then instead turn to
16 after-school programs, before-school programs, Saturday
17 programs, summer programs, as ways of somehow adding around an
18 insufficient core, creating a doughnut of school reform, if you
19 have it that way.

20 Bonnie was never one of those, and from the
21 beginning, her ideas about after school were about how to engage
22 kids and families in the project of education in a way that
23 would then bring change to the core K-12 school day. That's
24 what makes her program so remarkable, and that's a part of what
25 makes Bonnie the person she is.

26 We've heard about her passion. We heard about
27 her analytic abilities. We've heard about her heart. All of
28 those are evident, and have been evident to me in our work

1 together.

2 I think many of you know that Occidental is, in
3 the nation, the liberal arts institution that serves the most
4 diverse population in America. We also serve the highest
5 percentage of low-income students of any nationally ranked
6 liberal arts college.

7 Bonnie's and my affinity come from our care and
8 concern over the same kids, the kids that Mark Rosenbaum
9 referred to, whose only chance to make it in this state and this
10 society is through the education system. The creation of an
11 education system in this state that is as high quality and as
12 excellent as many of the other aspects of California is our
13 duty; it's our calling; it's our mission.

14 I know of no one, present company in this room
15 excepted, I know of no one in the state who carries that
16 commitment and that mission more deeply in her heart and in her
17 head on a day-to-day basis than Bonnie Reiss.

18 She is honest. She is certainly the antithesis
19 of doctrinaire. The only complaint I've ever heard about Bonnie
20 is that people can't quite tell where she's coming from. Well,
21 that's fine, because it is clear where she's going to, and
22 that's building a high quality, world-class education system.

23 Jack O'Connell mentioned earlier the importance
24 of clear communication and consistent, transparent communication
25 between the State Board and the Governor's Office. And perhaps
26 Bonnie's most remarkable feat in this town, known for straight
27 talk and deliberate connections, is that Bonnie has been able to
28 tell the truth.

1 CHAIRMAN PERATA: Do you know what town you're
2 in?

3 SENATOR BATTIN: This is Sacramento.

4 MR. MITCHELL: It was a slight irony. It's Los
5 Angeles, and it shows how confused I am.

6 Bonnie has been able to be honest, and clear, and
7 direct. Tells bad news to people when it needs to be told, and
8 shares the good news as well as anyone I know.

9 It's a pleasure for me to work with Bonnie, and
10 it's a pleasure for me to recommend her confirmation today as a
11 member of the State Board of Education.

12 Thank you.

13 CHAIRMAN PERATA: Thank you, sir.

14 MR. TAMMINEN: Mr. Chair, Members of the
15 Committee, my name is Terry Tamminen. I am the Governor's
16 Cabinet Secretary, but I'm not here in that capacity today, but
17 rather as a private citizen.

18 And the reason I'm not here in my official
19 capacity, of course, is the position of the administration is
20 obviously known, the administration nominated Ms. Reiss, and
21 also because I have known Ms. Reiss for about 15 years, far
22 longer than either one of us have served in government.

23 And that's why I'm here to simply commend to you
24 and the Members of the Committee today, that for that 15 years
25 that I've known her and longer, she has dedicated her life to
26 public service, especially serving women and children in the
27 State of California. And you would have in her as a member of
28 the Board of Education someone of the highest intellect,

1 integrity, energy, heart and good sense of humor.

2 And in the interest of brevity because I would
3 simply endorse much of what you've already heard, I'll leave it
4 at that and simply say that I strongly recommend her
5 confirmation to the Board of Education.

6 Thank you.

7 CHAIRMAN PERATA: Thank you.

8 Anyone further?

9 Anyone here in opposition?

10 I want to invoke privilege of the Chair, since
11 I'm a teacher by training, and after all these discussions about
12 lawyers, I'm really proud of that fact.

13 Bonnie, if I might, a couple things that have
14 come up concern me and, I think, the administration. So, you're
15 really wearing couple of jackets here today.

16 We are headed with No Child Left Behind down a
17 path that will be impossible to complete. And it's one of those
18 ironies of government where we're going to take money away from
19 people in order to get them to improve.

20 I've never understood that in any entire life.
21 I've never seen where less money makes something better. I'm
22 not so sure there's a correlation between more money and better,
23 but certainly the converse is not true.

24 It's been stated here that by 2006, we could have
25 800 school districts that would enter into the Program
26 Improvement under No Child Left Behind, and that sanctions would
27 be applied or could be applied.

28 I don't know, given the current state of the

1 budget, whether we would have any prayer of getting to that. So
2 the question becomes, what are we going to do about it?

3 Let's start with the State Board. Let's start
4 with you and your voice, and the State Board. It would seem to
5 me that the straightest path would be a negotiation with the
6 federal government and a reality check there. That's one thing.

7 The second concern I have is that I think the
8 standards that we are setting right now are much more consistent
9 with kids that are going to go the UC or CSU system and qualify
10 for entrance there which, by definition, means that we're really
11 leaving, ironically, we're leaving children behind. And we've
12 set the bar so high that we are really being forced to go after
13 the best kids and work with them. And I think the scores with
14 both English learners and Special Ed kids reflects that, as well
15 as the percentages that Mr. Rosenbaum mentioned.

16 So, there are two. I think this is probably the
17 most critical area that your tenure on the Board will have to
18 address, and I'm interested in your comments.

19 MS. REISS: Thank you, Mr. Chairman. I actually
20 think that those are probably two of the most significant issues
21 facing the whole state this year concerning education, is what
22 you brought up with the No Child Left Behind and the schools and
23 districts not making AYP. That'll be considered in the PI
24 schools or districts, as well as the High School Exit Exam.

25 On the No Child Left Behind issue, which is
26 something I think that's obviously not only an issue of critical
27 importance for the State Board, but also for the state leaders,
28 and the Legislature, for the Governor, for the Superintendent of

1 Public Instruction. It's not just an issue of, as the bar goes
2 up and the overview that was presented today by the LAO's
3 Office. It's not just an issue of the bar goes up so that when
4 100 percent of all schools and all subgroups within each of
5 those schools have to meet proficiency, everyone's saying, well,
6 at that point, every school in every state will be in a PI
7 school.

8 It's also upon us now. So, we heard just some of
9 those issues.

10 Before I began on the Board of Ed last year, a
11 decision was made in terms of how to count -- qualify schools
12 and districts as PI for the No Child Left Behind purposes. And
13 they -- a risky, risky according to No Child Left Behind law
14 approach was used, and that was to use as an additional
15 qualifier: lower socio-economic group.

16 Using that calculation and that math formula for
17 that additional qualifier, which was risky at best with the
18 current federal law, ten school districts were PI school
19 districts.

20 The federal government audited the state in
21 September, and on December 20th, they sent a letter to
22 Superintendent O'Connell and the State Board of Ed with 77
23 different findings, most of them easy to work out, but two very
24 significant ones, one dealing how we came up with our equation
25 to determine schools as PI schools and districts.

26 They disallowed our ability to use the additional
27 qualifier of lower socio-economic, which would mean 350
28 districts right now are considered PI districts.

1 So, there was follow-up done. So, the State
2 Board has that issue. I know Superintendent O'Connell is also
3 faced with how to deal with that issue. And school districts
4 and county offices of education right now are also faced with
5 how to deal with that issue.

6 I know that Secretary Riordan and the Governor's
7 education team, with leaders of the Board of Ed, as well as
8 Superintendent O'Connell, have been in a lot of meetings in the
9 last few weeks to look at, first of all, how to approach this
10 most imminent issue in front of us concerning No Child Left
11 Behind. Part of the discussion is, everyone agreed that it's
12 useless to ask for that particular ability to use that
13 additional qualifier. So, other approaches were looked at.
14 Twelve states have been granted the ability to use whole grade
15 levels as qualifiers, which we're told would mean 180 districts
16 are PI districts, instead of 350 districts. But it's still a
17 hugely significant additional number than what the state
18 currently and districts currently believe.

19 So, it's also a matter of being able to -- the
20 county offices said, well, what does it mean if you're a PI
21 district now and you weren't before? Well then, the county
22 office of education has to go out; there has to be a plan made
23 for those districts that are at risk of not being able to
24 provide supplemental services; and then a plan of action has to
25 be made in terms of how to make that improvement. So, that's
26 one discussion going on right now.

27 And myself, I am personally, as both a State
28 Board member -- because you said I wear a few hats. One is

1 Senior Advisor in my position in the administration as one the
2 Governor's advisors, and the other is on the State Board of
3 Education. So, and frankly, in both those capacities, I'm
4 pleased to be involved in trying to figure out, be part of the
5 team in solution, working with Jack O'Connell, working with
6 State Board of Ed leaders, working with other education leaders
7 in terms of what should we be asking? What do we have the best
8 shot of getting, and what's the right approach? Not just best
9 shot of getting, thus, oh good, you know, forget any standards;
10 let's just not be a PI district. So, what's the right thing to
11 ask for that still holds districts and schools, and elects
12 locally elected school board leaders accountable to deliver the
13 kind of education to all student populations that we all expect
14 them to.

15 So, we're working out a plan on that right now.
16 And I know that I, personally, and the administration, is
17 totally committed once the right plan of what we feel should be
18 asked for, and that takes into account evaluating what are all
19 the other states doing.

20 We'll go and meet with, I know that, our
21 President of our State Board of Ed, Secretary Riordan, myself,
22 we're talking about, I know, Superintendent O'Connell going back
23 to Washington, D.C. So, it's one, figuring out what's the
24 substance of what we want to ask for, the content. And then the
25 other is, the best political strategy to try to get that from
26 the U.S. Department of Education. So, that's current.

27 The longer term disaster under this is, what
28 happens when, as the bar goes up and up and up, and every single

1 subgroup and every single school has to meet that level when the
2 numbers go up. That's something, frankly, all states are
3 working on. And when I was last -- because of having the
4 fortunate opportunity to have actually coordinated the After
5 School Summit of about two, three years ago for then Arnold
6 Schwarzenegger, now Governor Schwarzenegger, with Secretary Rod
7 Paige, Margaret Spelling was involved in that, too, because she
8 was head of Domestic Policy for the White House. So, it was a
9 great opportunity to get to work with them. And in continuing
10 with that relationship and chatting with them, we're hearing
11 that there's probably -- that they understand what's going to
12 happen, and they're listening to all the states regarding that.

13 It's also important to note that I think everyone
14 agrees that a lot of aspects of No Child Left Behind are
15 excellent. And that requiring that all teachers be highly
16 qualified, and that there be standards of accountability so that
17 all students get the kind of education that they deserve is a
18 good one. It's just some of these aspects of the implementation
19 of it and what the consequences are to schools and districts.
20 We heard about the growth model in terms of, if you're a school
21 that has kids performing extremely low, and you've come up very,
22 very, very much, but you just missed the bar on the static
23 federal bar, and then you label that school and those kids
24 failures, that's probably not a good thing.

25 So, the issue is a critical one. I personally
26 share your concerns. Our administration shares it. Other
27 states share it, and it's something that I'm committed to
28 working on.

1 The other issue you brought up was really about
2 the High School Exit Exam. I know that one of the first issues
3 facing myself and the other Governor's appointees to the State
4 Board of Ed at our first Board meeting was districts asking for
5 a waiver because they said they weren't properly notified; they
6 didn't know they had to teach algebra. So, really, their kids
7 haven't been taught algebra, so they need a delay on the High
8 School Exit Exam.

9 Since the Legislature itself was the ones that
10 said we should have a High School Exit Exam, algebra is a
11 gateway skill and it's very important to include that, it was a
12 difficult thing as our first vote on the State Board, to already
13 grant a waiver to something that was really designed by the
14 Legislature to really be an incentive to both students and
15 schools and districts to have these, our young people, being
16 able to graduate high school with a diploma that means
17 something.

18 I know that the Legislature appointed a task
19 force to study all the issues surrounding a High School Exit
20 Exam. I don't believe that task force has made a report to
21 anybody yet, but I think that that would be an excellent subject
22 for public hearings to see what that's about.

23 I do believe, because you also mentioned the
24 vocational education, I know that that's -- I think that's a
25 very important direction to go, and I know our administration
26 thinks that's an important direction to go, and I know you do,
27 too.

28 But I think that my belief in that is that we

1 still want the high school diploma to mean something. You still
2 want to be able to have a state that offers all young people a
3 choice to get through high school and have a diploma mean
4 something, with basic skills in math, and reading, and writing,
5 but also give a choice to young people and create a different
6 kind of culture so that there's no dishonor in thinking that if
7 you want to get through high school, and have a meaningful high
8 school degree, but then pursue a meaningful career as a computer
9 technician, or in electronics, or auto mechanic, or a chef, or
10 any number of careers that don't require a college degree to
11 have a good, and lucrative and meaningful career, that that's
12 something the state should pursue as well. So, I think that is
13 my view on how I would look at it.

14 You know, when the task force does report back, I
15 don't think we want to -- I know none of us do -- lower any kind
16 of standards or expectations, because even though I'm greatly
17 concerned when I saw the preliminary results about particularly
18 English language learners, Special Ed kids, and the High School
19 Exit Exam, I'd rather see us as the leaders of the state figure
20 out a way to deliver better education to these populations than
21 to lower the bar and expect less.

22 CHAIRMAN PERATA: Thank you.

23 Senator Cedillo.

24 SENATOR CEDILLO: We've had the opportunity to
25 meet on this specifically, so you know my concern.

26 I am very pleased. First let me say
27 congratulations for your work on the Williams case. I had the
28 honor of being a law clerk for Mr. Rosenbaum one summer, and so

1 I know that was an incredible experience.

2 And you're right, simply scandalous, without any
3 reason or cause, that the prior administration would not address
4 this straight off. Just scandalous. And there's no defense of
5 that.

6 I'm sorry that Mr. Rosenbaum and Mr. Mitchell are
7 not here, but there is another concern that I have. I think we
8 have capacity, you have capacity, to address the problems of
9 education in our state. And I think we have the resources, as
10 the fifth largest economy in the world.

11 As you know, my concerns are specific to my
12 district first, as they should be, a district in which people
13 speak maybe close to a dozen languages, probably the largest
14 immigrant district, and a district in which, statewide, half the
15 children in kinder today are children of Latinos, many of them
16 immigrants.

17 In my district the numbers are incredible, the
18 Los Angeles Unified School District. Someone else knows those
19 numbers better than I do.

20 But the point is here. You know what my concern
21 is, and other people know it well. We create for those
22 students, regardless of all the things we do, after-school
23 programs, sports, everything we do in the classroom, there is
24 for students whose parents are immigrants, most of them here
25 legally, a specter that hovers over their educational experience
26 and their life experience because their parents cannot transport
27 them without fear of being stopped and having their car removed
28 from them. And that has a profound impact, I will just say that

1 to you, on their life experience and their educational
2 experience, regardless of everything that we do.

3 You have been lauded as being the go-to person,
4 the indispensable person. I think Mark said nobody wants to be
5 worked by Bonnie.

6 Just let me say this to you. And this is, as I
7 said to you privately in our meeting, this is not about the
8 Governor personally, but this is really about the Office of the
9 Governor and the need for there to be a sense of credibility, of
10 trust, to do what you say. Those are the issues that I raised
11 with you. I think those are the fundamental issues that should
12 be raised.

13 The Governor has a right to make any appointment
14 that he wants to make. We are simply to advise and consent.

15 But threshold question has to be one that we have
16 confidence, whether we have differences, which are fine, and you
17 and I probably have very few differences, but to have confidence
18 that those representatives will deal with the Legislature
19 honestly. And we are supposed to protect that.

20 And so, I simply ask you to join me to address
21 that other problem, that other scandal. Most of those parents
22 are here legally. We must do that today; 22 million motorists
23 are affected by it.

24 But specifically today, on this question of
25 education, you know the demographics of this state. You know
26 the immigrant value added when we see this young man here that
27 can take place if given the opportunity to participate without
28 that specter. People should not be presumed to be terrorists.

1 I had a man talk to me today serving food in a
2 restaurant where I had lunch prior to coming here. He says,
3 "This is ridiculous. I'm not a terrorist."

4 And I've shared with you the story of the father
5 who stopped me in Boyle Heights, concerned that his truck would
6 be taken away from him, that he can't take kids to school. Or
7 the mother who can't take her school-aged child to chemotherapy
8 because of the same fear.

9 And so, I just simply ask, as we move your
10 nomination forward, that that same indispensable person will be
11 available to address this other scandal.

12 MS. REISS: Senator, I'm very pleased to work
13 with you and every other leader here on these issues that are so
14 important to the people of the state. So I would like to pledge
15 that.

16 But I also would like to address a few things,
17 particularly because you talk about your constituents.

18 The Governor and the administration look at the
19 constituents of all 36 million Californians. And as you know,
20 that as critical as it is to these young children that have to
21 go to school and whose parents may not have a driver's license,
22 equally important is the security and well being of all
23 children.

24 No one is saying that anyone that comes here from
25 Mexico, that all of them are presumed terrorists. But a
26 governor, as you know, first and foremost has to be -- is very
27 concerned with the security of all people.

28 So, you understand that, and we've talked about

1 that. So, while I certainly understand your heart-felt concern
2 about helping the constituents, and getting a driver's license,
3 you also know that the Governor has also talked to you in a most
4 sincere fashion about trying to figure out how to do it in a
5 way, as the Governor concerned with the well being of all the
6 people of California, he can feel comfortable with the security
7 aspects. And I know that is where the issue lies.

8 And I do pledge to continue to work with you on
9 that.

10 SENATOR CEDILLO: I accept. We share the same
11 concern. There is no question about that. As I said, I wait
12 for you to be that indispensable person.

13 There are two aspects, though, to this question
14 that you raised. There is a question we were beginning to
15 discuss about those who are here and have authorized presence,
16 and then how we address those other concerns.

17 And I await, as I say everyday to any reporter
18 who asks me, I await a proposal to move this process forward.

19 Thank you.

20 MS. REISS: Thank you, Senator.

21 CHAIRMAN PERATA: Senator Battin.

22 SENATOR BATTIN: Mr. Chairman, I move the
23 confirmation of Ms. Reiss.

24 CHAIRMAN PERATA: Any further comments? Senator
25 Bowen.

26 SENATOR BOWEN: Thank you for addressing the
27 regulations. I appreciate that. I look forward to seeing a
28 re-draft.

1 My attention has been directed to a number of
2 situations where the previous board was perceived, at least, to
3 have limited public input by adding items to the agenda at the
4 last minute, or shortly before the meeting, making it difficult
5 for non-insiders to know what was going to be discussed, much
6 less have an opportunity to actually get there.

7 Would you take it upon yourself to make sure that
8 that doesn't happen, and that agenda items get published in
9 accordance the Bagley-Keene Open Meetings Act so we don't have
10 any parents who feel that -- not that they didn't have their
11 viewpoint agreed with, but that they didn't have an opportunity
12 to participate?

13 MS. REISS: I agree that that's a very, very
14 important goal for the State Board, or any open body, you know,
15 that has public hearings.

16 I'm very confident because of our new Executive
17 Director, Kathy Barkett, shares that view as well, and I know
18 will make every effort, as will our General Counsel, to do that.
19 So, I think that's important as well.

20 Thank you, Senator.

21 SENATOR BOWEN: Thank you.

22 CHAIRMAN PERATA: Do you want a summary comment
23 before we seal your fate?

24 We have a motion to approve, call the roll,
25 please.

26 SECRETARY WEBB: Senator Ashburn.

27 SENATOR ASHBURN: Aye.

28 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

1 SENATOR BOWEN: Aye.

2 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

3 SENATOR CEDILLO: Aye.

4 SECRETARY WEBB: Cedillo Aye. Senator Battin.

5 SENATOR BATTIN: Aye.

6 SECRETARY WEBB: Battin Aye. Senator Perata.

7 CHAIRMAN PERATA: Aye.

8 SECRETARY WEBB: Perata Aye. Five to zero.

9 CHAIRMAN PERATA: Congratulations.

10 MS. REISS: Thank you very much.

11 CHAIRMAN PERATA: And finally, I appreciate your
12 patience. Silly you got here early.

13 MS. BLOOM: I wanted to see what you did to my
14 fellow Board members, my colleagues.

15 CHAIRMAN PERATA: Ruth Bloom, you may present,
16 please.

17 MS. BLOOM: I don't know after that. Pretty
18 impressive.

19 Good afternoon. I am very pleased and feel
20 deeply privileged to come before you in this process. I have
21 had the opportunity to meet with some of your staff and with
22 some of you.

23 I feel very fortunate to have all ready served as
24 the Governor's appointee to the State Board of Education this
25 past year. I am fortunate because I believe that education is
26 the cornerstone of citizenship and participation in this
27 democratic country.

28 As you may know, I am a native Californian and a

1 graduate of the public schools of California. My family
2 migrated to California in 1940 and made a great life for their
3 children, as I have for mine.

4 I have degrees in educational psychology, English
5 literature, and in education. I have taught in the public
6 schools in L.A. Unified School District, and have a Life
7 Credential that allows me to teach all subjects K through 8.
8 Don't ask me to teach algebra, however.

9 I have also developed courses and taught them at
10 UCLA Extension in the areas of contemporary art history, a
11 particular love of mine and an area of expertise. I'm a life-
12 long learner. I am constantly reading and researching areas
13 that I find interesting.

14 I believe that the analytical skills that I have
15 acquired in this pursuit of knowledge allows me to be a good
16 school board member.

17 I served for nine years as a County Board Member
18 in the L.A. County Office of Education in the '80s. And I have
19 also served as a board member in many nonprofit organizations.

20 I know how to ask the questions, the right
21 questions, and how to follow through on the issues that are
22 raised.

23 I've also run a private business and have managed
24 many employees, as well as dealing with very creative people. I
25 have excellent management skills and people skills which will
26 continue to serve me well as a Board member.

27 I want to continue to serve on the State Board of
28 Education because I think I can make a difference for the 6.3

1 million students that are served in public schools in
2 California. I have taught students with limited English
3 skills. I have seen the need for schooling for pregnant teens,
4 and helped establish programs for these students, and was
5 actively involved in the development of the Los Angeles County
6 High School for the Arts.

7 I've worked hard for special education students
8 to achieve what they need for life success. I know teachers and
9 what they need, and even more, I think I know what is needed for
10 the future of California.

11 I want to expend my time on the Board helping
12 California develop a better qualified, more respected teacher
13 force. We will need more teachers in the middle schools in the
14 next five to eight years, and over 100,000 new teachers in the
15 next ten years. We will need to train them to teach algebra and
16 the sciences.

17 And if we are to adhere to our own state
18 standards that the Legislature has made into law, then the state
19 will have to provide more training for the teachers already in
20 the system, and a better recruitment and tracking system for new
21 teachers. We are in the 21st Century, and yet we do not have a
22 statewide tracking system for teachers or for students.

23 I believe that we have to be more proactive as a
24 state to encourage the development of parenting skills. Many of
25 the problems facing our public schools, whether it be language
26 ability, teacher recruitment, declining enrollments, growing
27 enrollments, higher costs, could be alleviated by involving more
28 parents in their children's education at a younger age.

1 I am encouraged by the actions the Board took
2 last year to allow schools to have full-day kindergarten if the
3 school, parents and teachers partnered to do so. I am also
4 encouraged by the programs being set up all over this state for
5 early education centers with the Tobacco Tax money. As a child
6 development specialist, I know that the earlier you intervene
7 educationally, the greater the growth.

8 I have expertise in many areas, as you have been
9 briefed upon. I'm not afraid to speak my mind, and I have no
10 agenda except to serve and to make the public school system a
11 little better for my having been here.

12 I hope that you recognize these abilities and
13 talents that I bring, and understand why our Governor, a friend
14 for over 25 years, would appoint a person of a different
15 political party, with differing views, to serve as one of his
16 appointees to the State Board of education.

17 I thank you for your time and for the privilege
18 of serving the students, teachers, and families of California
19 this past year.

20 CHAIRMAN PERATA: Thank you.

21 Anyone here like to come forward in
22 support?

23 MS. BLOOM: They're all in L.A.

24 CHAIRMAN PERATA: Good.

25 Anybody in opposition? This is wonderful.

26 I just want to tell you, Ms. Bloom, that I read
27 your comments, and if you would ever like to be a superintendent
28 of any school district in my district, I'd like to stand for

1 you.

2 MS. BLOOM: Thank you.

3 CHAIRMAN PERATA: I thought your comments,
4 particularly on flexibility and local results, were right on
5 point. We have, at least in the Democratic side of the aisle in
6 the Senate, our interest in having the money follow the child to
7 the site, and maximum flexibility at the site, to figure out how
8 best to educate the children there, is something that we're
9 deeply committed to. And it was very refreshing to read
10 something that I could have written myself. You're in a very
11 rare minority, but --

12 MS. BLOOM: And you probably are, too.

13 CHAIRMAN PERATA: I know, indeed.

14 I think we're very fortunate to have you on the
15 Board.

16 MS. BLOOM: Thank you.

17 CHAIRMAN PERATA: I appreciate the work that
18 you're doing.

19 Any other Members?

20 SENATOR BATTIN: Move the nomination.

21 CHAIRMAN PERATA: We have a motion to move.
22 Without objection, we will adopt the previous roll call
23 unanimously to appoint you to the Floor.

24 [Thereupon the motion to
25 confirm RUTH BLOOM was passed
26 unanimously.]

27 CHAIRMAN PERATA: Thank you very much.

28 MS. BLOOM: Thank you very much.

1 CHAIRMAN PERATA: We will also accept the
2 previous motion for Ricky Gill, and we have the unanimous votes
3 of the Committee for approval.

4 [Thereupon the motion to
5 confirm RICKY GILL was passed
6 unanimously.]

7
8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately
11 3:24 P.M.]

12 --ooOoo--
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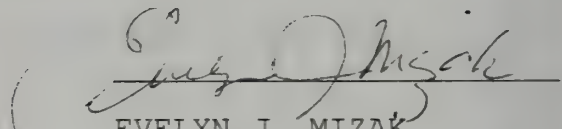
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of February, 2005.


EVELYN J. MIZAK
Shorthand Reporter

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APPENDIX



Goals and Objectives

What are your goals and objectives as a Commissioner of the Energy Resources, Conservation and Development Commission? What do you hope to accomplish during your tenure?

My goals and projected accomplishments are:

Resource Adequacy: To ensure that California has sufficient energy to meet its needs. That energy should come from environmentally-preferred and least-cost sources. It should include a mix of traditional supplies, renewable energy supplies, and efficiency improvements.

Energy Efficiency: To advance energy efficiency programs so that energy use per capita in California is the lowest in the nation, and continuing to decrease. This can happen with the confluence of four policy actions: (1) adoption of increasingly stringent, cost-effective appliance standards; (2) adoption of building standards that incorporate the latest measures and technologies; (3) promotion of incentives and loan programs to help fund individual efforts; and (4) expansion of customer information and assistance to help the general public capture the advantages of energy efficiency. I would also like to see expanded programs for improvements in energy use in the existing housing stock.

Renewable Energy Sources: To assure that the Renewable Portfolio Standard is on track to provide that 20 percent of the state's retail electricity needs are met through renewable resources. This should be accomplished without increasing energy prices; the costs of renewable technologies should be decreasing and economies of scale should be realized. In addition, as homeowners and businesses make economic decisions to improve their buildings' efficiency and add solar installations, the impact of renewable resources will be even greater.

Electric Metering Improvement: To provide that all electric customers in California are on a path to have advanced metering technologies that (1) allow time-differentiated pricing, (2) improve utility services, and (3) are cost-effective.

Reduced Dependence on Petroleum Fuels: To gain the support of public and private stakeholders in reducing the statewide demand for petroleum fuels. This could result from an effective combination of programs for improved fuel efficiency, alternative fuels, and mass transit.

Effective Energy Commission Role: To ensure that the Energy Commission provides the highest levels of technical and policy contributions to state

officials and the public. The Energy Commission must continue to solicit public participation in its processes and explain its decisions to the public.

Gasoline and Diesel Supply and Demand

The 2003 Integrated Energy Policy Report found that the demand for transportation fuels in California is increasing at an alarming rate, surpassing in-state refining capacity. California's refiners rely increasingly on imported petroleum products to meet demand and these imports enter through ocean port facilities that are reaching maximum capacity. The industry must expand its import and storage facilities, otherwise supply constraints and price volatility will continue.

Questions:

1. What steps should the state take to bring the demand for transportation fuels into line with supply? Do you feel in-state refining should be increased? If so, how should this be accomplished?

Because the federal government has the authority to mandate improvements in vehicle fuel efficiency, California has a limited range of options in that regard. However, as described in the Energy Commission's August 2003 Report on Reducing Petroleum Dependence (the AB 2076 report) and the 2003 Integrated Energy Policy Report, some programs for reducing demand, such as through improved tire efficiency, have been adopted by the state. In addition, California can attempt to build a coalition among states to seek federal government increases in the CAFE standards. I would also note that public transit use in California is a scant 2 percent; effective land use planning could help make public transit more attractive to Californians.

An increase in the state's petroleum refining capacity would enhance the security of our supplies but is not the entire answer. Expansion of other petroleum infrastructure, such as port facilities, pipelines, and storage facilities, would also be beneficial. However, facility expansion would require a significant level of private investment which could be facilitated by an improved siting process, perhaps one modeled on the Energy Commission's process for licensing power plants. The Energy Commission process respects local issues, invites public input, protects the environment, and adheres to a reasonable timeline.

The longer-term solution to a supply and demand balance may require the development of policies to promote the use of alternative fuels as well as improved vehicle efficiency.

2. Given that other countries such as China and India are now competing for gasoline refined abroad, how can California develop or maintain an adequate importation policy to make up the difference between in-state refining capacity and required imports?

California needs to promote an expansion of petroleum facilities in the state with assurances that such expansion is accomplished with the highest levels of environmental concern. There is also the possibility of pipeline expansion from Texas to our neighboring states of Arizona and Nevada which are currently served largely through California facilities. This would free up in-state facilities to meet our needs.

The state cannot mandate additional facilities but can only remove obstacles to them, as described above. In view of the limited options for supply enhancements, our principal efforts should be to promote alternative fuels and reduce demand while maintaining best practices for environmental protection.

Electricity Supply

As the years 2000 and 2001 have shown, California is vulnerable to electricity shortages. Californians still pay, on average, the third highest rates in the nation. Hot weather, coupled with other factors including increased economic growth, could reduce reserves to very low levels as early as 2006.

1. What are your views on what the state and, in particular, the Energy Commission should be doing to assure an adequate and affordable supply of electricity? Specifically, address the siting, permitting and construction aspects of supply and affordability.

The Energy Commission's Integrated Energy Policy Report for 2003, as well as the joint agency (CEC, Public Utilities Commission, Power Authority) Energy Action Plan, describe a preferred strategy for meeting the state's future electricity needs, as follows: first, add cost-effective programs for energy efficiency; next, aggressively pursue renewable energy resource development; and, finally, expeditiously license needed power plants and transmission facilities.

Current standards for improved energy efficiency in buildings and appliances have provided approximately 6,000 MW of peak demand reductions. In addition, programs are available to provide customers with the tools and incentives to reduce their electricity use at the times of the electricity system's peak demands. While peaks do not occur very many hours per year, reductions avoid the use of less efficient plants to meet peak loads or, in extreme cases, outages. The Energy Commission is working with

the Public Utilities Commission to develop additional programs, to be in place by the summer of 2005, for peak demand reductions.

After efficiency and demand reduction programs, the preferred would be those from renewable sources. Following the mandate of SB 1078, renewable resources will be developed aggressively, meeting at least a 20 percent goal by 2017. Under provisions of SB 1078, this reliance on renewables will not increase customers' costs.

Additional conventional power plants will also be needed. The Energy Commission's procedures for licensing power plants assure that license applications receive timely reviews, with full public participation and environmental protection. In the last seven years, the Energy Commission has licensed more than 20,000 MW of generation, with more than 8,000 MW coming on line in the last three years. Another 5,000 MW is under construction. We anticipate additional license applications, totaling approximately 2,000 MW, in 2005.

In assessing the resource adequacy for the summers of 2005 and 2006, the Energy Commission has recognized pressing near-term needs, especially in southern California. We are taking a number of remedial actions that will make a difference for the summer, such as delaying retirements, accelerating new plant construction, removing transmission constraints, and offering incentives for customers to reduce their use when the system is approaching a critical level.

It should also be noted that *sufficient* generating capacity helps hold down costs, but *excess* capacity may cause customers to pay a premium for this "insurance" against outages. Meeting the goals of adequacy and affordability requires the development of, and reliance on, accurate information about the state's resource needs and the costs of alternative resources.

Natural Gas Supply

Natural gas has increasingly become the state's fuel of choice for generation of electricity. Several companies have proposed siting new liquefied natural gas facilities in, or close to, the state. At the same time, natural gas prices have become volatile and have increased in recent months, raising concerns about over dependency on that fuel source and its impacts on utility bills.

1. What steps should the Energy Commission take to ensure that the state does not become over-dependent on natural gas and to mitigate price fluctuations to protect utility customers?

There are a number of actions the state can pursue to moderate dependence on natural gas and mitigate high and volatile prices:

- **We can seek to increase supply. Given the limits on production capability in North America and the growing competition for interstate gas, the most economic means of increasing supply appears to be the importation of liquefied natural gas. This was a finding of the 2003 Integrate Energy Resource Policy Report. It should be noted that the Energy Commission has no jurisdiction over the siting of LNG facilities.**
- **We need to continue to increase the efficiency of natural gas appliances, including those used for space heating.**
- **Additional research and development will be used to develop efficient natural gas technologies.**
- **Improved efficiency of electricity use will help to reduce the amount of natural gas used for electricity generation.**
- **Greater reliance on renewable sources of electric generation will redound to the benefit of natural gas supplies.**
- **New power plants will continue impressive trends in gas use efficiency.**
- **Increasing the availability of gas storage can help to offset seasonal gas price volatility.**

2. **As chair of the Energy Commission's energy efficiency committee, what actions will you take to balance new natural gas supplies with more efficient use of the fuel?**

I will continue the successes of the Energy Commission's building and appliance standards and support the development of innovative efficiency technologies. The state has in place efficiency standards for a number of natural gas appliances, including water heaters, clothes dryers, boilers, pool heaters, and furnaces. Since appliance standards were first adopted in California, California customers have saved 3 million therms of natural gas. The latest set of standards was adopted by the energy efficiency committee and the full Commission in December 2004, to go into effect January 2006. The energy efficiency committee has begun to consider the next round of appliance standards to identify appliances for which more efficient use of natural gas would be both feasible and cost-effective for customers.

In addition, we continue to upgrade our standards for electric appliances. Through 2001, we estimate that the standards have saved over 12,000 MW, representing a significant reduction in the need for gas-fired power plants.

It is also important to continue to improve the energy efficiency of buildings under our Title 24 responsibilities. Since the vast majority of California homes are heated with natural gas, more efficient homes will consume less gas. The Energy Commission is beginning a process to consider the next level of building standards that will take effect in 2008.

The Green Buildings Initiative, announced by the Governor in December 2004, seeks to reduce the energy consumption of state buildings by 20 percent, with private building owners encouraged to follow suit. That initiative will benefit from the Energy Commission's experience and research into measures for efficient buildings.

Besides mandating measures for new construction, we need to augment programs that seek to improve the efficiency of existing buildings.

3. How can the state increase natural gas supply and usage and also address adverse air quality and climate change impacts from fossil fuel usage?

Concern with air quality led us to our current reliance on natural gas as a primary power plant fuel. Natural gas is more efficient and less polluting than other fossil fuels. However, in order to balance the increased use of natural gas in California with its environmental consequences, we must continually improve the efficiency with which gas is used. This is true for its use in homes and businesses and has been especially noteworthy in power plants. The newer plants are twice as efficient and produce many fewer emissions than the older plants.

Natural gas should be used only when there are not more economic and less environmentally harmful alternatives. In addition, the facilities related to any increased supply or demand of gas must meet high environmental standards.

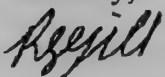
January 1st, 2005

Senate Rules Committee Members:

I consider it a distinct privilege to serve California as the Student Member of the State Board of Education and appreciate deeply your consideration of my confirmation. Without reservation, the State Board has embraced education reform that centers on students. By focusing on the state's 6.3 million students, the State Board has and will continue to reshape California's education system to boost achievement and provide opportunity. By taking the lead in establishing sound educational policy, the State Board is consistently setting the tone for local districts to improve the performance of students and schools. I am honored to participate in this policymaking process, which is brightening California's future. What follows is a list of my personal objectives and goals in relation to the State Board of Education:

1. Cultivate greater student leadership at the local level by encouraging pupil membership on school district governing boards.
2. Protect California's world-class standards, because they form the basis of the state's instructional and assessment models.
3. Authorize high-quality, standards-based professional development programs for principals and Math and English teachers.
4. Adopt rigorous and relevant textbooks for California's "K-8" students by working in conjunction with the Content Review Panel.
5. Continue the spirit of cooperation with the plaintiffs in the Williams settlement, advance the agreement in a direction amenable to both parties, and specifically make necessary adjustments to the School Accountability Report Card (include current data and more user-friendly summaries)
6. Implement the legislation pertaining to the Williams case, thereby ensuring that children studying in a core content area regardless of their school have access to at least one standards-aligned textbook or instructional material.
7. Support the STAR test as a verifiable link between our statewide instruction, assessment, and accountability models.
8. Place greater emphasis on the Content Standards Test rather than the CAT/6 (norm-reference test) in API calculation.
9. Develop credible ways to report accurate graduation statistics and hopefully incorporate this data into the API formulation for high schools.
10. Boost the passing rate of the CAHSEE across subgroups, as the consequence date for the class of 2006 is approaching.
11. Search for fair methods to administer the CAHSEE to students with "exceptional needs," in accordance with SB 964.
12. Lobby the federal government for a change in No Child Left Behind's accountability structure, Adequate Yearly Progress, from a status model to a growth model.

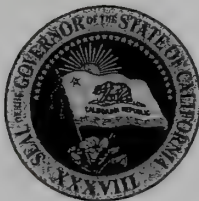
Sincerely,



Ricky S. Gill

JAN 03 2005

The first of these is the fact that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The second is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The third is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The fourth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The fifth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The sixth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The seventh is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The eighth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The ninth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable. The tenth is that the system is not a simple one. It is a complex system, and the behavior of the system is not predictable.



OFFICE OF THE GOVERNOR

April 12, 2004

Ms. Nettie Sabelhaus
 Appointments Director
 Senate Rules Committee
 State Capitol, Room 420
 Sacramento, California 95814

Dear Ms. Sabelhaus,

Thank you for your consideration of my appointment to the State Board of Education.

I appreciate the questions the Senate Rules Committee wish answered in advance of the confirmation hearing. I am pleased to provide the following responses which I hope are succinct, yet adequately convey my positions on these important issues.

Question 1:

Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Board of Education?

Response:

I consider serving on the State Board of Education a tremendous privilege and a tremendous responsibility. My goals as a Board Member include serving the best interests of our students above all others. I intend to help California students become lifelong learners, build their academic foundation upon our world-class academic standards, as well as increase our focus on career technical education. I am particularly aware of tremendous inequities in "economically disadvantaged" schools, and even more so where English learners compose a high percentage of the population. Bringing greater equity to the least economically advantaged schools and students is a high priority of mine.

It is vitally important to provide as many qualified teachers into California's classrooms as possible. If we are to see students achieving beyond just a basic level of competency, it is critical that teachers are trained properly at the teacher preparation programs in colleges and universities, and provided support and guidance once they have entered into the K-12 classrooms.

While it may not be fiscally possible at this point, once the State's economic situation begins generating additional revenues, I would like to explore the possibilities of giving

priority to the issue of the “digital divide.” Technological literacy should be addressed if our students are going to get the education that can provide them the opportunities to seek meaningful employment. This is not just an issue problem of “wiring” schools or getting computers to the classrooms, but we must ensure teachers are receiving proper materials, standards, aligned curriculum, and adequate teacher training and development.

I intend to serve as a “team member” on the Board. As Senior Advisor to the Governor, I will bring the full support of the Governor’s office to important issues facing the Board, and provide coordination between the Governor’s Senior Staff, the Secretary for Education, and the Superintendent of Public Instruction.

Question 2:

Current State Board policy requires all instructional material funding to be spent on board adopted materials. Many school districts would like to have the flexibility to spend some of those funds on materials that reflect local needs. Would you favor such a change?

Response:

It is my understanding that connecting instructional materials to State standards has had good results and should be continued. However, I strongly believe that the State should consider allowing some flexibility for districts or individual schools and teachers to follow an approach that they can show is better suited to their students. One size or approach cannot fit all, especially in a State with over 6.3 million students. I am sensitive to districts that advocate for flexibility to use instructional material dollars to reflect local needs. I believe that it is also important to maintain a standards-based focus. A tremendous amount of time and effort was put in by a diverse set of individuals and groups for California to adopt world-class academic standards for its students. Recently an excellent “balanced” solution to the science teaching curriculum was reached by the Board which allowed both “hands-on” teaching as well as a basic amount of “fundamental text learning.” I favor this kind of balanced approach.

Question 3:

Constituent groups such as the bilingual education community have in the past felt shut out of meaningful discussion with the Board of Education on matters important to them. With so many new appointments to the Board, what should the Board do, if anything, to help build a more positive relationship with this constituency who may feel similarly?

Response:

I believe strongly in involving all interested parties and constituencies in issues that involve them. The best decisions are made only with input from all those impacted, and I, therefore, believe the Board should ensure collaborative discussions from diverse constituencies in the education community, particularly on complex policy matters.

State Board meetings are open to the public, but limit testimony to approximately 3 minutes per person. Public testifiers are allowed to present an unlimited amount of written information to the Board. While I understand that the Board meetings must be somewhat limited in time, it might not be possible to allow for "unlimited dialog" with constituencies, perhaps the Executive Director with one or two Board members on a rotating basis can schedule regular meetings with diverse constituencies. I believe this is very important, and I am open to suggestions on how to best encourage meaningful dialog with these different constituencies.

I would also suggest that it may be helpful for the Board to convene informational hearings in conjunction with Legislative committees, in order for constituencies to have a more open forum to discuss their specific needs and issues. Additional forums and airing of important public policy issues can only help Board members and Legislative members make more informed decisions when considering policy alternatives and making specific choices. Joint informational hearings would also serve to foster a collaborative relationship between legislative members and Board members.

Question 4:

Under California's accountability system, schools that continue to fail academically require ever increasing interventions. The Board has a large role in determining the nature of the interventions. Does the State have the capacity to intervene when necessary? If not, what do you believe is needed?

Response:

I believe the State's intervention in "academically failing schools" must play a critical role, if we are to earnestly address the needs of our students.

To begin with, it may be helpful to do a "basic inventory of physical resources" at each school. If we do not know if a school has basic instructional materials, computers, toilets, classroom space or credentialed teachers, it becomes more difficult to know what areas may need to be addressed in order to provide students with a more productive learning environment. When students at a school are still not adequately performing despite the school having a minimum level of resources, then not only should the State provide assistance to districts to better serve those students, but it must do so in a cost effective way that actually achieves the desired results.

Given the limited budget resources available to the State this year, we should consider reviewing our intervention process and results. Should we focus more intervention teams on the lowest decile schools? Should we be reviewing which intervention teaching teams and approaches are having better results and duplicating them? These are very important

questions for which I currently do not have the answers, but commit to pursuing expeditiously and seeking the input from our State's leading experts.

Question 5:

What is the appropriate role for the Board in addressing the problem of persistently low passage rates on the high school exit exam for students with disabilities and for English language learners?

Response:

This is an important and very complex question, with no simple solution. First, students with disabilities clearly have special needs that should be taken into consideration if the State is to appropriately serve them. An important first step is ensuring that students are properly assessed to identify their special needs. Over 20% of the teachers serving students with disabilities are not adequately trained. Furthermore, in some instances, students with minor special needs are grouped with students of extreme disabilities. This problem is compounded when teachers are not properly prepared to teach students with such diverse special needs. As a result, too many parents are frustrated when students who simply cannot read are misdirected to special education classes. Additionally, too many costly lawsuits are draining our limited resources.

I am acutely aware of the issues surrounding students with disabilities on a personal level. My godson is a special education student and is an exceptional young man, capable of holding many good jobs and having a very bright future. Yet giving him the same high school exit exam as non-special education students makes little sense, seems unfair, and could block students like him unnecessarily from future options. I believe strongly that we should take a hard look at other approaches for students with disabilities, while, of course, taking into consideration the federal and constitutional limitations and any unintended "negative stigmatizing."

Finally, I will be an impassioned advocate for a larger share of federal special education funding for California. Currently, the state receives only a small percentage of what is owed by the federal government to pay for the federal special education mandates. With the cooperative assistance of Mrs. Eunice Shriver, a long time national advocate for special education, I plan on making a concerted effort as much as feasible, to allow the Administration to draw down more federal special education dollars to California.

In addressing the needs of English language learner students, they should be properly served as early as possible, long before high school. We must recognize that some English language learners move to this state and start schools in California later than most students, as late as middle school or even high school. Regardless of when an ELL student enter the school system, whether it be Pre-Kindergarten, Kindergarten or in

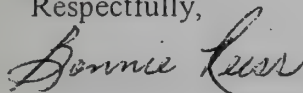
grades 1 through 12, we need to ensure that these students receive the services necessary to become fully English proficient, as early as possible. In doing so, districts should be encouraged to provide educational strategies that are pedagogically sound, in order to accomplish this in the most effective and efficient manner.

The high school exit exam has not been without controversy since the Legislature first adopted the mandate. The issues surrounding the exam are not limited to just students with disabilities or ELL students, but for students statewide as well. At the last Board of Education meeting some school districts asked for a "waiver" from the algebra requirement of the high school exit exam. Because the Governor and the Board did not want students to be "punished" because their school or district did not offer them the appropriate algebra classes, the waiver was granted. Yet this was distressing because it was the will of the Legislature to require algebra proficiency since it is considered a "gateway" skill for all our students. We all struggled with the question of how the State ensures that all the school districts and/or counties follow the wishes of the State Legislature. The Board, the Legislature, and all school districts should be working together to ensure that all schools are adequately serving our children. It is my hope that we can work together to meet this difficult challenge.

Clearly, the purpose of a high school exit exam is to create a mechanism to work together providing a school district curriculum that allows students to master the core, academic principles so they can face the competitive workforce and get a proper job, function as an independent adult and hopefully, have the means to pursue their dreams and goals. We all recognize that "social promotion" does not serve anyone well, especially our students. Yet, is the high school exit exam serving its purpose, is it achieving its goal? If it is not, we should not just eliminate it, we should review it and fix it.

Thank you for your time and consideration. I understand that these questions and responses merely skim the surface of the myriad of important statewide education issues. I do hope it will at least provide a first-glance insight into my goals, philosophy and approach to serving on the State Board of Education. Thank you for this great honor.

Respectfully,

A handwritten signature in cursive script, appearing to read "Bonnie Reiss".

Bonnie Reiss

Senior Advisor to the Governor

MEMBERS

ROSS JOHNSON
VICE-CHAIR

BETTY KARNETTE

WM. J. "PETE" KNIGHT

GLORIA ROMERO



GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

JOHN L. BURTON
CHAIRMAN

April 2, 2004

Ruth Bloom
16 Westwind Street
Marina del Rey, CA 90292

Dear Ms. Bloom:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the State Board of Education on Wednesday, April 21, 2004. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

Following are questions which we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that Senators might conduct a more informed discussion with you at the hearing. Please have this information in our office by Wednesday, **April 14, 2004**. It would be greatly appreciated if you would fax your responses to 916 445-0596.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Board of Education?
2. Current State Board policy requires all instructional materials funding to be spent on board adopted materials. Many school districts would like to have the flexibility to spend some of those funds on materials that reflect local needs. Would you favor such a change?
3. Constituent groups such as the bilingual education community have in the past felt shut out of meaningful discussion with the Board of Education on matters important to them. With so many new appointments to the Board, what should the Board do, if anything, to help build a more positive relationship with this constituency and other constituencies who may feel similarly?

4. Under California's accountability system, schools that continue to fail academically require ever increasing interventions. The Board has a large role in determining the nature of the interventions. Does the State have the capacity to intervene when necessary? If not, what do you believe is needed?
5. What is the appropriate role for the Board in addressing the problem of persistently low passage rates on the High School Exit Exam for students with disabilities and for English language learners?

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Peace and friendship,


JOHN L. BURTON

JLB:nsjff

RUTH BLOOM

16 Westwind St. Marina Del Rey CA 90292
tel. 310.306.2087 fax. 310.306.2927 ruthbloom@aol.com

April 6, 2004

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814
Fax 916 445-0596

Five pages including cover

Dear Nettie Sabelhaus,

I am sending by fax the answers to the questions that have been sent me by Senate Rules Committee Chair, John Burton. If there are any further questions do not hesitate to contact me.

My one question to you is an elaboration of question #1 what the committee wants in a verbal presentation?

With thanks,


Ruth Bloom

APR 07 2004

Ruth Bloom

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RUTH BLOOM

I am very pleased to have this opportunity to bring together the ideas I have as an educator and a citizen. I have been involved in education in many ways my whole adult life. My strongest concerns are in early childhood education, literacy, arts education and in teacher education.

QUESTION 1. GOALS

I hope that as school board member I can effectuate decision making in those areas. Early childhood education is probably the area of least responsibility as a state board member but in terms of importance for all the other decisions I will be involved in, it has the most importance. I hope, as a school board member, to create dialogues with Head Start, Children Centers, and other programs that involve the pre Kindergarten child. If children are prepared for kindergarten then many of the very large problems in schools could be alleviated. I intend to support and encourage state funded quality, part-day preschool for all three and four year olds whose parents choose to send their children to such programs.

Literacy is different than reading. Reading is a skill that allows one to have the physical ability to read; literacy is understanding what is read using that ability. I would like to see that the skills taught in K-6 are inclusive of comprehension and thinking skills.

Arts education is a vital component of learning. The arts are a vehicle for learning all other subjects and are subject areas on their own. Who we are as people are a result of participating in culture and making new culture. All the arts: visual, music, drama, and writing have equal importance to me. As a goal for the next three years, I hope to re-focus teachers, parents and the public on the importance of the arts for personal growth, community growth, job opportunities and for the enjoyment and education it offers everyone.

As an educator, whether in the public schools, university or in private preschools, I have seen how great an effect a teacher

Ruth Bloom

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can have on a student. I have also seen bad teachers, uneducated and disinterested teachers. I hope as a school board member to see a revamping of teacher education programs at the university level with an emphasis on encouraging highly educated college graduates to pursue careers in public education, much like the Teach for America model. I would like to see the tests for teaching credentials be of a higher standard and the acceptance level higher. I would rather have a smarter teacher with greater teaching skills and larger classrooms if necessary, than lower the standards and have mediocre teachers with smaller class sizes. I also believe that supporting teachers in the classroom is of utmost importance. Providing continuous education for teachers, whether upgrading teaching techniques or providing support in meeting differing needs of their students, is a responsibility of a Board Member.

QUESTION 2. ISSUE OF FLEXIBILITY IN USE OF INSTRUCTIONAL FUNDS

I believe that for schools to be successful they have to have a sense of ownership. For this to occur the decision-making should be on the local level. Obviously, there are state requirements that have to be met. However, I believe that if a local district or school has found some materials that work well for their students and that their teachers are trained in those materials, then they should have the flexibility to use their funds on those materials that meet their needs. I do not believe in cookie cutter children, or cookie cutter schools.

QUESTION 3. CONSTITUENT GROUPS

I would hope that specific constituencies such as the bilingual education community or charter school community or special education community will feel it possible to dialogue with any member of the board whenever a need arises. It is my understanding that we have liaisons on the board to specific entities or communities within education. Each Board member takes on the responsibility of being the expert in that area for other board members. If it were necessary to add more such liaisons, then I would both support them and be a willing liaison.

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QUESTION 4. INTERVENTION IN FAILING SCHOOLS

The issue of the state's capability for intervention in failing schools is a difficult one. Since the state must also abide by the federal government's directives in the NO CHILD LEFT BEHIND ACT it follows that if the standards are not met, you could have the state running a majority of the state's school districts. I believe that if we get to that stage, where the state office of education's capabilities is overstretched, then a good hard look at the standards or testing methods would have to be done. The state board of education cannot be the local board for everyone in the state. It is not the job for the board except in specific circumstances.

QUESTION 5. HIGH SCHOOL EXIT EXAM FAILURE RATE

First of all, the goal of the Board and of educators everywhere is to educate all students to a specific level and above. We need an educated public and we get that by educating all of our students. There are various levels of disabilities as well as levels of English comprehension. I could feel comfortable with providing tests to students with disabilities that take into account their particular disability. I also believe that standards should be set for all students with disabilities. If students cannot take timed tests, see questions to answer, or can barely hold their heads up, then that student's IEP should indicate how to test and evaluate them for the High School Exit Exam. For LEP students I believe that taking the Exam in their own language would be acceptable. The important role for the Board in this issue is setting the standards high enough that we have an educated population and that the passage of the Exam has meaning to the larger world. It is necessary to be flexible for those students with differing learning styles. I believe that it is imperative that each child who graduates from public school in the state of California and passes the High School Exit Exam

Ruth Bloom

feels that they have accomplished something important in their twelve years of public education.

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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

THOMAS J. CAMPBELL, Director
Department of Finance

RUTH E. GREEN, Member
State Board of Education

GAVIN PAYNE, Chief Deputy
Superintendent of Public Instruction

GLEE JOHNSON, Member
State Board of Education

CATHY BARKETT, Executive Director
State Board of Education

1 JOHNATHAN X. WILLIAMS, Member
2 State Board of Education

3 ASSEMBLY MEMBER MERVYN DYMALLY
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We will begin the proceedings. First up is Thomas J. Campbell, who, as I understand it, going to be the new Secretary of State; is that correct?

[Laughter.]

MR. CAMPBELL: I'll have to check with Condi Rice.

CHAIRMAN PERATA: No, I meant California's Secretary.

MR. CAMPBELL: I knew what you meant.

[Laughter.]

CHAIRMAN PERATA: So, if you're not prepared to accept that post, this is the confirmation for the Director of Finance.

You may open, sir.

MR. CAMPBELL: Mr. President and Senators, thank you for holding the hearing. This is a tremendous honor to be considered for this position. I'm very grateful to Governor Schwarzenegger for reaching out and asking me to join in this effort.

And personally, it's a pleasure to come back to the State Senate, where I spent two very happy years, and where I think I got more done than in many years in Congress.

My number one focus is to try to do all I can to get jobs for Californians. That's my focus. It comes from a personal sense of what I saw in my district when Silicon Valley went into a downturn economically and unemployment levels rose.

1 I saw things that I thought were almost impossible in terms of
2 folks losing their jobs, moving away, and all of the other
3 attributes that follow from unemployment, the negative
4 attributes such as truancy, spousal abuse, alcohol abuse, drug
5 abuse. All of those go up with a high unemployment.

6 So, when the Governor asked me to take this job,
7 I thought if I could do something to get more jobs for
8 Californians in my position at the Department of Finance, that
9 would make me feel that I'd been doing public service of the
10 highest order.

11 And the way Finance works in that is to create an
12 economic environment for jobs to grow in our state, and for
13 those with jobs to offer to have a high regard for the way that
14 finances of our state are managed.

15 In closing my opening remarks I will say I am so
16 looking forward to working cooperatively with you,
17 Mr. President, with the colleagues in the Senate and in the
18 Assembly, and have the highest regard from my previous
19 experience for how the process works, and fortunately, have
20 friendships with individuals, including, I'm happy to say, with
21 you, Mr. President, and others with whom I had the honor to
22 serve in the past.

23 CHAIRMAN PERATA: Thank you, sir.

24 Questions, panel?

25 You're a very well known quantity.

26 Senator Bowen.

27 SENATOR BOWEN: Yes, but I'd rather go later.

28 CHAIRMAN PERATA: Why don't I just go ahead. I

1 have a couple.

2 It was noted last week, and I believe it's fairly
3 obvious that as basically budget director there's a correlation
4 between your interest in jobs and the state budget. I noticed
5 last week that there was a surge in the stock market based upon
6 a report that came out that said that job growth had softened.
7 This was after some very large tax cuts which were used to
8 stimulate the economy, which I always believe is job growth.

9 I don't expect you to comment on that, but what
10 do you see as the state's potential for having an
11 interrelationship between, in this case, no tax increases which
12 has been the administration's position, and job growth?

13 MR. CAMPBELL: The relationship I see deals with
14 the fact that people who have jobs to offer consider the tax
15 levels in their decision as to where to locate. It's not all
16 they consider, and I and you both know that infrastructure,
17 quality of life figure in that as well.

18 But employers who have jobs to offer look at the
19 cost of living, including taxes that their employees will have
20 to pay if they locate in California versus, let's say, Texas.
21 And if they locate in Arizona or Texas or New Mexico, they're
22 going to look at a lower tax burden. And that's a fact in where
23 they decide to locate.

24 In my prepared testimony that I gave in response
25 to the questions, I cited the Department of Commerce web site.
26 And it's worth checking, of course, so that we are operating
27 under the same data. But Department of Commerce calculated the
28 state and local tax burden per capita, and California came in

1 tenth. And you'll see some dispute -- and I want to be very
2 clear -- some people come up with lower numbers, something
3 closer to 15. They're doing that per thousand dollars of
4 income. But the web site to which I refer has both, and the
5 relevant number is per capita, and that's because an employer is
6 going to say, what do I have to pay my employees to come to work
7 in California, as opposed to Texas, as opposed to where else I
8 could put my jobs.

9 So, I think you probably know, Mr. President, I
10 have as a Congressman and as a State Senator voted for taxes.
11 It is not that I have an absolute, all conditions, no matter
12 what opposition to them.

13 I'm making my very best estimate that in this
14 present economic environment an employer with jobs to offer
15 would look at California and see the following. She or he would
16 see that we had a burst of revenue at the end of the last
17 decade. We built a lot of it into formulaic expenditures.
18 Those formulas continued to expand expenditure when the revenue
19 dropped. And if we solve that problem by increasing taxes
20 rather than addressing the formulas, I'm worried that the
21 employer's going to say, "Well, that's what California will do
22 to me once I sink my roots in California," and go elsewhere.

23 And in my prepared testimony, I had several
24 surveys indicating employees, employers saying exactly that.

25 CHAIRMAN PERATA: I'm not planning to flag for
26 anything right now. You deserve the time to work through, and I
27 think your budget lays that out fairly clearly.

28 One of the things I will say that is vexing me --

1 like you, I come up from the Bay Area. I used to come up all
2 the time, and unfortunately now I'm here more. But I asked for
3 the job, I know -- the congestion.

4 Now, we have two people here representing
5 Bakersfield and Palm-something-or-other. They don't have any
6 traffic down there like those of us in civilized California.

7 [Laughter.]

8 CHAIRMAN PERATA: And as you know, the burden
9 that we're placing on people, the high cost of housing. Today I
10 heard from the realtors, and I assume they know, we're now up to
11 \$471,000 as the median price of a home in California, including
12 \$510,000 in the City of Oakland, which has a school district
13 that's in bankruptcy.

14 The average commute in California is almost an
15 hour.

16 And I understand the formulaic concerns and all
17 that, but what disturbs me mightily is the lack of attention
18 that we've given to these infrastructure problems. And I think
19 more than anything, and I know it's all intertwined, but it's
20 very clear that the length of commute, which equates to the time
21 you can spend with your families, and the condition of
22 infrastructure throughout the communities have a direct
23 relationship on the economics and the viability.

24 We are a state that puts not dime one into the
25 ports of California, which is, logistics, is one of the major
26 industries of the state.

27 You know, this is a conversation that we could
28 have at some other time, but it is one that I'd like to talk to

1 you about at some point. I admire your breadth of understanding
2 and your attention to detail. And those are real concerns for
3 me and for my caucus. So, I don't expect an answer, but we can
4 talk.

5 MR. CAMPBELL: I'll just offer, I'm certainly
6 willing and happy to talk with you on that. And I'm sorry that
7 this budget continues to take from Prop. 42. I would very much
8 rather that it not. And I understand the final budget is not
9 approved until the people's representatives in the Legislature
10 and the Governor agree.

11 But there is one thing in the Governor's
12 long-term plans which address the point that you just raised.
13 And that is, admittedly not this year and admittedly not next
14 year, but thereafter it's the Governor's plan that we no longer
15 take from Prop. 42.

16 Secondly, that we take the amount that we should
17 have been putting into Prop. 42 and promise, in a Constitutional
18 Amendment, that we will pay it back over 15 years, and that we
19 cannot borrow from it going forward, also in a Constitutional
20 Amendment.

21 And that will enable local units of government to
22 bond against an income stream, because right now you can't bond
23 against Prop. 42 money because the Legislature and the Governor
24 can and have taken it.

25 So, I wish I could say this year we're fixing it,
26 and I can't. But I can say that long-term, let's devote the
27 money that the citizens wanted to devote to infrastructure when
28 they approved Prop. 42 to that purpose.

1 CHAIRMAN PERATA: Another thing along with this,
2 I don't think anybody would disagree that housing starts and
3 overall construction, even the money that we've been putting
4 into roads, have really been California's job market and job
5 creation.

6 It is disturbing to note that the forecasts for
7 next year are for new housing starts to slow, as well as the
8 predictors that the fed may bounce up another quarter, maybe
9 even half, throughout the year, which I think would have a very
10 chilling effect. Most people have been surfing that low
11 interest wave.

12 My own concern, in summary, is that the future of
13 two years from now, I don't think we can wait that long. And it
14 may be unusual for a Democrat to talk like this, but I think
15 that Chicken Little may be right, and we'd better just look up
16 and see if it's the case.

17 Debra, are you prepared to ask questions now?

18 SENATOR BOWEN: Thank you.

19 First let me hope for you that you fare better
20 today than Cal did in the Holiday Bowl.

21 [Laughter.]

22 CHAIRMAN PERATA: Did Michigan State get in a
23 bowl this year?

24 SENATOR BOWEN: I'm sorry, I didn't hear you.

25 [Laughter.]

26 SENATOR BOWEN: There are a number of issues that
27 I'd like to get your thoughts on.

28 The Governor is proposing to increase the

1 Department of Finance's budget by \$1.9 million and five
2 positions to develop a statewide integrated budget system. I
3 guess it will be called the Budget Information System.

4 Can you address the shortcomings of the current
5 system and talk about how the BIS -- not to be confused with the
6 BCS -- will eliminate those shortcomings?

7 MR. CAMPBELL: I can, although I'd be happy to
8 give you more detail if I'm inadequate in my detail.

9 The fundamental question is interface, that right
10 now we don't have a computer system which allows the preparation
11 of budget numbers in a software application that can seamlessly
12 interface. Particularly that's true actually within the
13 executive branch, and it's true between constitutional
14 offices.

15 That makes it difficult at May Revise. It makes
16 it difficult in our audit function as well.

17 So, the fundamental goal is to get a single
18 platform which would allow seamless interface on budget data and
19 allow monitoring across all departments.

20 SENATOR BOWEN: Will you be looking at including
21 in that things like not just original cost of acquiring
22 software, but cost of upgrades, cost of training? How do you
23 envision this, or are you just going to use the existing
24 counting codes?

25 MR. CAMPBELL: I can't say that with the degree
26 of detail of your question, Senator.

27 I'm going to say that of course we have to
28 estimate the cost of upgrade and the cost of maintenance.

1 Indeed, the present discounted value of the cost of maintenance
2 and the cost of upgrades is the larger portion for virtually any
3 software application program. So, we would certainly be
4 considering that in our evaluation.

5 SENATOR BOWEN: There is, and I think this is
6 part of a lead-in from the last question, there's an ongoing
7 problem of including out year savings from other categories,
8 like savings in software and maintenance costs, when we're doing
9 a procurement. And we see this often from DOF, and it's
10 regardless of which party is in charge.

11 Examples: Clean-up standards for meth labs, the
12 Department of Finance looked at the cost of developing the
13 standards but not the savings that would come from having
14 properties where meth labs were cleaned up to a uniform standard
15 around the state.

16 Green buildings: DOF looked at the cost of
17 developing regulations and meeting standards, but not at the out
18 year savings in terms of reduced energy use and fewer sick days.

19 Foster care: Foster care programs that train
20 parents and keep siblings together. Current year costs may be
21 higher, out year costs, we hope for a much better outcome
22 through the foster care system.

23 What are your thoughts on how we solve the
24 problem of what's a cost versus what's an investment, and how we
25 make the decision where it's better to spend money now to
26 insulate the building rather than paying SMUD a lot extra on an
27 ongoing basis?

28 MR. CAMPBELL: You want to be careful that your

1 estimates include the present discounted values of costs and
2 savings benefits as well as debits. And that's what I would do,
3 and to the best of my knowledge, the Department of Finance has
4 tried to do, perhaps not in every respect as efficiently as they
5 ought, but I don't have a specific as you do.

6 I would offer this caution, though. I want to be
7 careful about overly optimistic budgeting, and I did that in
8 this year's budget particularly.

9 This is the real danger, that you can make
10 numbers seem lower by unduly optimistic assumptions of savings.
11 I'd rather count them once I got them.

12 Now, you can't do that entirely because you have
13 the out year projections as to deciding which capital investment
14 is a wiser one. But that's the caution I would say to you.
15 Otherwise, your point is absolutely correct.

16 Let's be careful that we count what we can pretty
17 solidly realize and not balance the budget on the assumption
18 that we have savings yet to come.

19 SENATOR BOWEN: I think the concern is, some of
20 us, and I think we've all had this experience in Appropriations,
21 of getting cost estimates of doing something that are just
22 phenomenal, you know. Here's a regulation we're asking the
23 Department of Toxic Substances Control to develop, and they
24 estimate that it would cost \$850,000 to develop, for example,
25 regs dealing meth cleanup standards.

26 And you look at it, and you wish that you could
27 bid on the job, if that's going to be the number. That's always
28 my yard stick for whether it seems out of line.

1 So, I hope that we can have an ongoing discussion
2 with Finance about the places where estimates seem out of line,
3 or in those places, and I think green buildings is the classic
4 example, where in the private sector, we're seeing a move
5 towards energy-efficient buildings, because the pay-off is very
6 often 18 to 24 months.

7 Yet, with DOF's budgeting mentality that, if it
8 has to go out the door this year and it costs two dollars more,
9 we're not going to approve it, we miss out on the opportunity
10 over the long run.

11 MR. CAMPBELL: Point well taken, Senator.

12 When I was a Congressman, I was privileged to
13 introduce legislation for federal standards on consumer utility
14 usage, along the lines of just what you described. And as I got
15 into that subject and was fully briefed on it, I came to the
16 conclusion that the market was not properly reflecting the
17 savings, and that was a strange thing. Normally, you tend to
18 think that prices reflect directly marginal cost and marginal
19 benefit.

20 So, I have a bit of background in exactly that
21 area, and I would not have introduced the bill if I didn't think
22 it was a savings.

23 SENATOR BOWEN: I'd like to talk briefly about
24 the role that you will have in dealing with information
25 technology purchases. This is an issue that I've been involved
26 with since Jim Cuneen and I prevailed upon whoever the Speaker
27 was in the beginning of 1995 to create a budget sub on IT.

28 Of course, we have series of failures. I know

1 you're familiar with them. Those led to the creation of the
2 Department of Information Technology, or DOIT, which apparently
3 didn't do it, and was subsequently disbanded. It had very
4 little power over computer projects pushed by another
5 department. No ability to deal with stove-piping issues where
6 departments created literally parallel systems, each with its
7 own stovepipe, and then couldn't share data where it was
8 appropriate.

9 How does the state avoid repeating that with the
10 CIO position that's being created?

11 MR. CAMPBELL: You make it a strong CIO. Right
12 now, actually today, we have yet another meeting on this
13 subject. We hope to get, probably before the end of this week,
14 our final proposal on the coordination between the CIO office
15 and Department of Finance.

16 A strengthened CIO, I think, is the heart of the
17 improvement. Finance still has a role. I think there has to be
18 for supervision of the purchases made. If there is no watchdog
19 at all, even the very best-run organization eventually can be at
20 risk.

21 But what was missing in DOIT and what was missing
22 before the crisis hit is a single strong CIO. And I think
23 that's the model that we're going to have. I have the highest
24 regard for Clark Kelso.

25 SENATOR BOWEN: I do, too, but he needs backing
26 from you and from the Governor if he's to be successful.

27 MR. CAMPBELL: Yes, that's in the proposal that
28 we're talking about.

1 SENATOR BOWEN: You noted in your answers that
2 you are not familiar with the Corrections computerized tracking
3 system or lack thereof.

4 This is one of those projects that has been
5 kicking around for years, the costs in Corrections that come
6 about because you need to have an inmate in a particular court
7 to testify in another case, but no one knows where he or she is
8 because there's no computerized system. Not to mention the cost
9 of replicating records on paper every time there's a transfer,
10 which happens in the CDC system, and then medical care issues as
11 we have an aging population, obviously all cost drivers.

12 But the Department of Finance has consistently
13 rejected efforts by CDC to get an electronic system in place.
14 Thoughts on how to get something moved forward in a way -- and
15 it's because of cost. There's security issues with the data.
16 There's questions about who has access, and all of those kinds
17 of things.

18 But thoughts about how we might get that moving?

19 MR. CAMPBELL: Well, I'm afraid not very detailed
20 thoughts, as I said in my answer. It wasn't something in which
21 I was intimately involved.

22 So, what I thought I'd do in following up on
23 receiving the questions was to contact YACA and contact the CDC
24 and find what we could about what proposals they have and be
25 supportive of them.

26 We run the risk, and I hope we don't fall guilty
27 of it, because we have a supervisory, or surveillance may be too
28 strong a word, role with regard to so many cabinet agencies that

1 we not substitute our judgment for theirs.

2 But I have confidence in the Secretary's focus
3 upon the issue, his awareness of it. And my role is to evaluate
4 the proposals that come forward.

5 SENATOR BOWEN: You have a difficult row to walk,
6 because you don't want to substitute your judgment for that of
7 the agency, but when we look at the FIB's computer system, and
8 the amount of the money that's been spent and where it is, you
9 wish that somebody had exercised a little more oversight.

10 MR. CAMPBELL: You're right. It's a balance.

11 SENATOR BOWEN: So, I will look forward to
12 working with you on those issues.

13 I just think, if we are going to position
14 California for the 21st Century, and the performance review,
15 much of it, focuses on the state's antiquated computer systems
16 that don't talk to each other and where there are huge security
17 risks.

18 We just gave out 1.3 million Californians' Social
19 Security Numbers to a researcher at some university that I won't
20 name who lost the disk, or had their laptop taken with all that
21 information that was compromising the identities of an enormous
22 number of Californians. So, I think we need to focus on that as
23 well.

24 MR. CAMPBELL: I agree. I think that was a
25 visiting professor from another university.

26 [Laughter.]

27 MR. CAMPBELL: In fact, I know it was. But
28 doesn't mean it was less of a problem.

1 SENATOR BOWEN: Two more questions.

2 One, the Department of Finance has gone
3 electronic in a lot of ways. The budget is on line; budget
4 documents are on line.

5 In fact, when the budget was released earlier
6 this year, there were no paper copies. It was only available on
7 the web, which actually made it difficult, even for people in
8 this building who complain endlessly about too much paper, to
9 get the budget. And, as you know, not everyone has access to
10 the web, or certainly the kind of access by which you could
11 download the entire budget document, much less a printer that
12 you wouldn't need to buy a new drum for if you printed it.

13 What kinds of mechanisms have you made available
14 for people who still need paper copies of documents?

15 MR. CAMPBELL: First of all, in our
16 responsibility to the Legislature, I do know that we delivered
17 physical copies to many, if not all, of the Legislators within
18 two days after the delivery of the budget.

19 And secondly, regarding those who don't have
20 access to computers, I agree with you. That's an issue of great
21 importance.

22 But the most voluminous part of this are the
23 tables that very few individuals really are seeking to access.
24 Rather, the spiral is perhaps the most popular use, and we do
25 continue to print the spiral. And the A pages, which is much
26 more text than tables, voluminous as it is, is not a serious
27 download problem for computers that are available through
28 libraries.

1 To the future, though, the decision to go with an
2 e budget was the right decision. That is where we need to be.
3 And I have just no doubt that this year, let alone in future
4 years, more citizens in California have access to the budget
5 because of that than otherwise.

6 We would be printing up lots of copies. Lots of
7 tourists came by, I understand, last year. Perhaps it was to
8 study our budget, and perhaps it was to get a free photograph of
9 our Governor.

10 SENATOR BOWEN: Or at least the sign over his
11 door.

12 MR. CAMPBELL: But let's say they were studying
13 our budget. Even so, very, very few, I suspect, of the folks
14 were actually getting access under the printed system than now.

15 So, as we transition, we're making the right
16 move. Many more people are going to be able to get into the
17 detail of the budget because it's an e budget.

18 SENATOR BOWEN: I don't disagree with you. I'm
19 just mindful that not everyone has access.

20 Also, if you're really going to work with a
21 document that's of that magnitude, you largely don't yet work
22 with the electronic copy of it. In legislative offices now what
23 we do is, we have a stickied copy of it that's got those little
24 3M tags sticking out, and paperclips.

25 MR. CAMPBELL: I wonder if that's a generational
26 thing. And I'm very much with you on that. I need to have the
27 paper.

28 SENATOR BOWEN: If you'd like to help us fund a

1 wireless network in the Capital, so that we could all carry our
2 laptops around, perhaps we could get rid of the paper. But I
3 can just imagine the incidents of laptop identity problems.

4 MR. CAMPBELL: Those are the problems of this
5 century, and we'll work on them.

6 SENATOR BOWEN: One final set of questions. I
7 actually have a letter in the works to you, so I will get it off
8 to you, but it has to do with a proposal to shift from a defined
9 benefit to a defined contribution plan. There's been plenty of
10 discussion about that. I'm sure there'll be more.

11 My particular question focuses on the potential
12 for impact of that decision on women. The studies, last studies
13 I've seen, show that women still make 73 cents on the dollar.
14 Contributions under a defined benefit plan are based on the
15 salary of the employee. So, if women are being paid 73 percent
16 of what a man would make, they're going to have a lower
17 contribution level.

18 And then, women still live considerably longer
19 than men, so that at retirement, if an annuity is purchased for
20 a woman and a man, and a man's life expectancy is 77 years at
21 age 65, while a woman's is 81.7, you're taking the same amount
22 of money that's been accumulated and stretching it over an
23 additional period of years, meaning the monthly benefit is going
24 to be smaller, and the pot was smaller to start with, in
25 general, because women make less than men.

26 So, as you move forward with these proposals at
27 the legislative level, I would be very interested to know what
28 steps, if any, can be taken to deal with this problem.

1 It's not a problem with a defined benefit plan,
2 because you get the benefit, and you get it for the balance of
3 your lifetime.

4 The salary problem is still an issue, but it's
5 not magnified by the fact that that's going to determine the
6 starting point for a shorter benefit.

7 So, I don't want to put you on the spot right
8 now, but as an old pension lawyer at a firm called Winston &
9 Strawn, where I think you spent some time, I focused on issues
10 like that and which have now come back to haunt me.

11 MR. CAMPBELL: Senator, I think we should
12 disclose that you and I practiced law together at Winston &
13 Strawn.

14 CHAIRMAN PERATA: And neither of you could make a
15 living at it.

16 MR. CAMPBELL: Exactly.

17 [Laughter.]

18 SENATOR BOWEN: We couldn't hack the law firm
19 thing.

20 MR. CAMPBELL: I think the firm would love to
21 have you back. They may not feel that way about me. You stayed
22 at the firm longer than I.

23 But I think the President Pro Tem's comment is
24 quite right. I obviously couldn't succeed at that so I became a
25 teacher. A teacher of law is a whole lot better than
26 practitioner of law.

27 CHAIRMAN PERATA: He's saying, "I couldn't make
28 it so I became a teacher."

1 MR. CAMPBELL: Oh, no. I was referring merely to
2 my own career. No comments meant outside of that.

3 Senator Bowen's point is absolutely important.
4 The first half, as your question proceeded you agreed: There
5 really isn't any difference between defined benefit and defined
6 pension -- and defined contribution regarding the fact that
7 women are paid less than men largely in our society. That's
8 going to be reflected either way, so I don't think we make it
9 any worse.

10 As to the latter point, that's intriguing, and I
11 certainly want to be sure that nothing that we do adds to any
12 unfair treatment.

13 We had this issue in a number of other contexts,
14 as you know, when Title 7 was first adopted, and when the
15 question of pensions was addressed and benefits. The greater
16 longevity of women as opposed to men was addressed in law.

17 So, I'm open for further advice on that, by all
18 means. I just want to conclude by saying the fundamental goal
19 is that whatever money we put in, and in whatever form we put in
20 -- by "we" I mean the Legislature and the Governor -- that is
21 for the hard working employees of the state, we do not put the
22 taxpayer at undue risk. That's my goal. And the defined
23 benefit program has that aspect. It just does.

24 So, let's say we all agree that \$100 is the right
25 amount to put into pension funds for state employees this
26 particular time period. As between defined benefit or defined
27 contribution, it's clear to me defined benefit leaves the
28 taxpayers on the hook.

1 That it has other aspects of the nature you
2 described, I'd certainly want to consider as well.

3 SENATOR BOWEN: I focused on the retirement
4 period and the life expectancy, but this is very often also a
5 question for women who've taken time out, and men, who've taken
6 time out of their working careers to parent, to work in a
7 nonprofit, to serve in the Legislature or in the administration,
8 and who therefore may have a shorter period of time in which
9 contributions are made. That's a problem under both kinds of
10 plans, but those are the kinds of things, as we discuss these
11 proposals, that I'm going to be very concerned about and I think
12 the Women's Caucus will be very concerned about.

13 Thank you.

14 CHAIRMAN PERATA: Senator Ashburn.

15 SENATOR ASHBURN: Thank you, Mr. President.

16 Mr. Campbell, I think it's remarkable that a
17 person designated to be the Director of Finance for California
18 under the fiscal conditions that we've experienced in these last
19 few years would open by saying that your number one goal is job
20 creation.

21 I'm interested in your perspectives on the
22 employees of the Department of Finance, and others throughout
23 state administration who deal with budgets and finance, and
24 their perspective that the well being of the state's budget is
25 tied not to taxes, necessarily, revenues derived from the
26 public, but to jobs.

27 If you'd expand on that very briefly, because
28 what I'm talking about is the culture. If that's your goal, are

1 you going to be able to impact the culture of an agency, a
2 department of administrators who are career civil servants?

3 And I'm doubting that that's their perspective,
4 that job creation is job number one.

5 MR. CAMPBELL: Two answers, and I will be brief
6 as you requested.

7 One is, I've not found any resistance in the
8 professional ranks of the Department of Finance to the goal of
9 job creation as the immediate necessity of our state. And I've
10 been not just pleased. I've been overwhelmingly pleased with
11 the quality and dedication of the folks that are working at the
12 Department of Finance.

13 I came in December 1. Nobody had any holiday to
14 speak of. They just worked. And 11:00 o'clock, 12:00 o'clock,
15 I'm getting e-mails at 2:00 in the morning. These are
16 exceptionally hard working people.

17 And the commitment to improving the job situation
18 in our state so that people can be -- can lead a decent life,
19 what's the whole purpose of our enterprise here on earth? It's
20 to lead a decent life and hopefully have enough time to
21 contemplate the infinite. That's what we're here for, and jobs
22 are essential to get there.

23 SENATOR BATTIN: Wow.

24 [Laughter.]

25 CHAIRMAN PERATA: You'll have time for rebuttal.

26 [Laughter.]

27 MR. CAMPBELL: And if you don't have a job,
28 you're focused on the mundane, the daily. You're not focused on

1 the infinite.

2 As to the second quick part of my answer, I do
3 have some very serious complaint about the Department of Finance
4 as it was operated ten years ago when they testified against my
5 bills.

6 [Laughter.]

7 SENATOR ASHBURN: And you remember the names.

8 MR. CAMPBELL: Oh, yes. We're going through a
9 roster right now. Some have changed their names upon my
10 becoming Director.

11 [Laughter.]

12 SENATOR ASHBURN: Senator Perata asked the
13 question of taxes in terms of an impediment to job creation.

14 If I were to draw up a list of impediments to
15 job creation, to the infrastructure crisis that the state
16 faces -- electricity, water, transportation, extraordinarily
17 rapidly rising housing costs in California -- it would not
18 include taxes, my list.

19 My list would include other governmentally
20 sponsored or inspired impediments to job creation, and drivers
21 on the cost of public infrastructure.

22 And I'm wondering if you are going to be willing
23 to take these on?

24 And first, I'd be interested in your list and how
25 it compares to mine, and then your willingness to take it on.

26 MR. CAMPBELL: My list includes regulatory reform
27 and taxation levels, both.

28 I'm responding to what I know from my experience

1 as a representative of the people in my district, and also from
2 what I read in surveys. You'll find some of those cited in my
3 prepared answers to the questions, but the one that comes to
4 mind is the most recent January survey from Chief Executive
5 Magazine, 438 CEOs who are considering expanding, and they
6 decide that California is the least welcoming environment.
7 We're the last. We're dead last. We're worse than the District
8 of Columbia.

9 And they do mention taxes, and they do mention
10 regulation. So, taxes are there as well as regulation.

11 You'll also see the Bain study report, the Bain &
12 Company report that was done for the California Competitiveness
13 Council. And you'll see reference to taxes in the testimony
14 that John Chambers gave as to what he hears from his CEO peers.
15 He's the CEO of Cisco. So, taxes are part of it.

16 What makes the tax issue so salient and why I
17 emphasized it in this year's budget is, first of all, you have
18 more control over that in the Governor's budget than you do over
19 regulatory reform. My job does include components of both, but
20 more clearly it does on the tax side.

21 But secondly, it's this problem of how we got
22 into the fiscal situation we're in. Was it a spending problem,
23 or was it problem of insufficient revenue?

24 If you believe it's a problem of insufficient
25 revenue and that we should increase tax levels all the more, I
26 think you're missing the reality of 2000 and 1999, as I
27 explained it before best as I see it. And that's how employers
28 look at it.

1 So, if we don't solve a spending problem with a
2 spending answer, if we add a revenue answer, I am very concerned
3 that we will be perceived as not understanding how we got into
4 this, all of which figures into jobs because then the employer
5 says, "Lord help me if I come to California. Once they got me,
6 I'm a sitting duck for next revenue shortfall as they'll define
7 it," as opposed to expenditure overhang, as I would define it.

8 Lastly, on what I can do about regulations, I
9 know that the Governor put out -- one of his first, if not his
10 first then one of his very first executive orders regarding
11 regulatory reform, making sure that agencies did not issue new
12 regulations without going through a very careful analysis that
13 has in mind what it will do to job creation. And I hope to be
14 part of that, but to tell you the truth, from December 1 until
15 today, it's been budget.

16 SENATOR ASHBURN: Let me be more specific.

17 We don't really build any highways in California
18 at the current time, and you mentioned Proposition 42, and the
19 raid on what was supposed to be a set aside for that purpose.

20 And yet, the budget of Caltrans and the number of
21 employees of the State Department of Transportation has been
22 growing.

23 Now, as Director of Finance, you know, what role
24 are you going to take in figuring out what these people do? If
25 we're not going to design them, and I would remind you that the
26 voters explicitly passed a measure which allowed for the
27 contracting out of engineering and survey work, explicitly, to
28 the private sector, and yet we have an explosion within the

1 Department of Transportation of the number of personnel devoted
2 to those tasks for projects for which there is no funding, is
3 not likely to be funding. And the timelines on bringing a
4 project into reality are so extraordinary that it is basically
5 nonexistent.

6 In my own area, to add one-quarter mile of a
7 passing lane on a two-lane highway took seven years. And that's
8 because of the studies for insects, rodents and weeds, and for
9 the right-of-way acquisition through a process that had to be
10 created for a different century.

11 If we're talking about job creation,
12 transportation, water, electricity are critical to meeting a
13 population demand. Now, as Director of Finance there's a role
14 there. What is it?

15 MR. CAMPBELL: There is a role there. We have
16 performance audit authority as well as financial audit
17 authority. And our audits are done oftentimes upon the request
18 of an agency, but not exclusively upon the request of an agency.
19 And we do have a rotating series of audits that take into
20 account the performance of an agency as well as simply the
21 financial matters.

22 And the Caltrans situation, of course, has been
23 brought to my attention. It is of importance to all of us.

24 Regarding the particular areas that you
25 identified, there are obviously federal standards as well,
26 particularly to the extent that any federal money is involved in
27 the projects that you described, and the National Environmental
28 Protection Act as well as the implementation within our own

1 state is implicated.

2 But your question is what can I do as Director of
3 Finance, and the answer is, Finance does have authority for
4 performance audits, and I consider that an important part of my
5 job. But I cannot today tell you that I do intend to perform an
6 audit of this agency or that.

7 SENATOR ASHBURN: What I like about you, Tom, is
8 that you have been in the Congress, and you have been in the
9 Senate, and you have been in academia, and you have been a
10 representative of the people.

11 And yes, there are federal laws that relate, for
12 example, to environmental quality. We have duplicate and
13 sometimes more stringent standards in California law.

14 But no one says that it has to take seven years.
15 And there seems to be no sense of urgency.

16 And that's why you end up with housing prices of
17 \$410,000 as the median price in Oakland.

18 CHAIRMAN PERATA: It's \$510,000 for Oakland.

19 SENATOR ASHBURN: So, I mean the public, if
20 you're a new family, and you're aspiring to live a quality of
21 life and to enjoy the American dream, it is the government
22 through a seven-year process to add a quarter-mile passing lane
23 on a project that probably could have been done in a couple of
24 months that is the impediment to job creation and to the
25 acquisition of the dream.

26 And I'm suggesting that as the Director of
27 Department of Finance, you have not only the responsibility to
28 put out a budget book, but you have a responsibility to make

1 sure that the government is organized in a way that gets the job
2 done. I'm challenging you to accept that responsibility, to be
3 as bold and controversial as I know you can be.

4 MR. CAMPBELL: Let's not get into my last
5 campaign.

6 [Laughter.]

7 MR. CAMPBELL: But I take your point. Thank you,
8 Senator.

9 SENATOR ASHBURN: Thanks. Let me just do two
10 others real quick.

11 How much of the budget that was presented is
12 yours?

13 MR. CAMPBELL: It is all the Governor's.

14 SENATOR ASHBURN: How much of what the Governor
15 presented did you have a hand in developing as opposed to your
16 predecessor?

17 I'm not trying to embarrass anyone. I just want
18 to understand.

19 MR. CAMPBELL: The Department of Finance is
20 working on the budget all the time, and I entered December 1.
21 A substantial amount of the work with the agencies had already
22 been done, naturally, or we would have been derelict.

23 It was my privilege to advise the Governor almost
24 immediately upon coming in. And I was learning as I was
25 advising.

26 So, let me say, every fundamental policy
27 decision -- strike fundamental -- every policy decision was made
28 by the Governor. I was able to advise the Governor on every

1 fundamental policy decision, and the work preparatory to that,
2 that allowed these decisions to be made, had been ongoing since
3 long before I got there.

4 SENATOR ASHBURN: And finally, what tools, what
5 are you lacking in authority or jurisdiction to have the impact
6 that you, Tom Campbell, would like to achieve in assuming this
7 extraordinary role?

8 MR. CAMPBELL: The question might be answered
9 when we finish the California Performance Review set of
10 recommendations because among them is a proposal for an enhanced
11 OMB kind of institution which would elevate a little bit more
12 the management side to which your questions, Senator, have been
13 referring.

14 You already heard my response to Senator Bowen
15 regarding IT. And if we elevate the CIO, the Chief Information
16 Officer, we'll coordinate with that position as well.

17 I think that those proposals are where I should
18 -- the context in which I should answer your question.

19 On the budget side, I think that the Governor
20 needs to have some control if spending gets above revenues
21 during the year. I think waiting till the end of a fiscal year
22 is just not good management, and I think that no company would
23 work that way. And the Governor has put forward a proposal for
24 a Constitutional Amendment to incentivize that a budget get done
25 on time, and a budget that would not put us into the situation
26 of having to make substantial readjustments along the line.

27 So, those would be my answers. If the people
28 could adopt the recommendation of the Governor on budget

1 structural reform that has been submitted to the Legislature, I
2 think that would give us the authority we need.

3 SENATOR ASHBURN: Thank you.

4 CHAIRMAN PERATA: Senator Battin.

5 SENATOR BATTIN: I don't know whether to call you
6 Director Campbell, Senator Campbell, Congressman Campbell,
7 Professor Campbell, Dean Campbell, so Tom.

8 I actually don't know if I will even ask any
9 questions.

10 I just remember the first time I met you was ten
11 years ago or so, maybe a little longer than that. I was just
12 elected to the Assembly, and I had thought that it would be a
13 good idea for me to go over to the Senators and meet them before
14 I had a bill in front of them and met them that way. So, that's
15 how I ended up in your office.

16 And we had a great discussion then. It's a real
17 interesting way to learn about somebody, is to sit down and talk
18 with them, and talk about philosophies. I remember we talked
19 about it, and actually I couldn't have told you everything that
20 we had talked about until the other day when you came into my
21 office as the Meet-and-Greet for this post. And the first thing
22 you asked me about was Martha's Kitchen, which is a shelter that
23 helps people who are in need, and we had discussed that. I was
24 on the board at the time of the organization. And I just was
25 very impressed with your not just remembering that, but that I
26 recalled our conversation.

27 I don't have any doubts of your ability at all
28 about this and your capability of handling this job. I think

1 the Governor made a great choice in you.

2 I don't have any concerns that you are going to,
3 in my political perspective, be a disappointment. I think that
4 you'll be very strong on what you believe are the way the state
5 should be run and the budget put together.

6 I'm very happy. I told my caucus when we'd
7 heard, "Oh, hey, that's great." I actually had not thought of
8 your name as to who we were going to have as the new Director of
9 Finance.

10 I do have a question. How did you come about the
11 job, by the way? Did the Governor just call you out of the
12 blue?

13 MR. CAMPBELL: Well, a very close friend of the
14 Governor called me and asked me if you would be willing to talk
15 to the Governor about it.

16 I was driving across the Bay Bridge.

17 [Laughter.]

18 MR. CAMPBELL: And I was contemplating its beauty
19 and its cost just at that point in time.

20 [Laughter.]

21 MR. CAMPBELL: So, my friend asked if I would
22 pull over. And I said, "I can't pull over. I'm on the Bay
23 Bridge." And he said, "Well, call me right back," and I said,
24 "I can't. I can't write down your number." So he said, "Okay,
25 let's hang on the phone until you can get off."

26 So, I got off the Bay Bridge, off Fremont Street,
27 and that's how it happened.

28 I did not apply for the job. I didn't know that

1 I would ever be considered for it. I learned of my
2 predecessor's leaving by reading the Oakland Tribune. I was
3 Dean of the Haas School of Business at Berkeley, and that's how
4 I learned.

5 So, I was very surprised and honored, is a fair
6 comment as well. But this is not one that I had planned.

7 But, you know, my career is full of things that I
8 planned that didn't come about.

9 [Laughter.]

10 SENATOR BATTIN: Either that, or I wonder if you
11 can't keep a job, looking at the resume.

12 In interactions since, I'm very impressed with
13 your take-charge attitude. And I came to you recently and said,
14 "This is a proposal that I think would really save the state
15 money." You jumped on that immediately and thought, well, this
16 is a way we should do that.

17 Like I said, the questions that Senators Bowen
18 and Ashburn both asked were fine, and I'm very happy to make the
19 motion to accept your nomination.

20 MR. CAMPBELL: Thank you, Senator.

21 CHAIRMAN PERATA: Senator Cedillo.

22 SENATOR CEDILLO: Let me join the chorus.

23 Let me say though that for me, the most important
24 attribute that I perceive of you with respect to our
25 deliberation here is that you appear to be painfully, just so
26 forcefully committed to honesty and integrity. In every
27 sentence that you utter, it appears that have evaluated that it
28 is as accurate and as honest a representation as your thoughts

1 are. So, let me say that to you first. So, that's my primary
2 criteria, so you know where I stand.

3 But I do want to engage if I can, Mr. President,
4 a few questions with respect to this. And I am looking forward
5 to working with you. You have tremendous capacity,
6 extraordinarily capable, and a great record.

7 But obviously, we may disagree. Let me ask you
8 about a couple of things.

9 You talk about areas where in the budget '99-2000
10 that we made commitments that were not thoughtful with respect
11 to long term. And I'm going to ask you, obviously probably not
12 today, but I need you to be very specific about that, because
13 that is not my sense of how we got into this situation.

14 My recollection of the time period, in fact I
15 disagreed with them frequently, but my recollection of the
16 previous administration was an unwillingness to make those types
17 of commitments, that I frequently felt a push-back from them
18 about making those investments, and that the mantra that I heard
19 was one-time dollars for one-time expenditures.

20 We did very well with that. My district did very
21 well with that, and we're very proud of it. Which then for us
22 produced in some instances a hundred-fold increase in terms of
23 public-private partnerships with those investments.

24 So, I'm going to want you to, for purposes of
25 accuracy, to differentiate those expenditures during that time
26 period, because that is not my recollection, and I don't have a
27 sense, I may be wrong, but I would like to see specifically
28 where we made program growth and expansion and commitments, and

1 where we made one-time investments, because I felt strongly that
2 that was one of the mantras, to be fair to the previous
3 administration.

4 So, I'll seek your response on that.

5 Secondly, I appreciate your sensitivity on this
6 question of investments, and when we make investments, and when
7 we ask the people to make investments.

8 You know that you and I disagree, but on this
9 question, though, I feel that we are being unfair to some
10 members of our society in asking them to carry a burden and a
11 responsibility -- students, seniors, poor people -- and that the
12 state that is home to half of America's billionaires, a quarter
13 of America's millionaires, could raise the standard of
14 expectation, could encumber those more able to shoulder their
15 fair share of responsibility.

16 And like Senator Ashburn, I think that we need to
17 have a contextual framework to evaluate our investment
18 strategies, that we have to look at -- for business, for
19 retaining business, for creating business -- quality of life,
20 quality of education, quality of infrastructure, transportation,
21 quality of housing, quality of health care and the health care
22 infrastructure because I believe that those, with the addition
23 of location, including geographic location, Pacific Rim and the
24 infrastructure that exists there, and things like weather. I
25 mean, the more I travel, the more I realize what a blessing it
26 was to grow up here, but also that this would be a choice to be,
27 rather than freezing in the north east. I don't know if
28 anybody's here from Miami, you know, sweltering in the south in

1 the summer. You know what I mean.

2 And so I think that for us, we need those types
3 of evaluations for the types of choices that we'll be presented
4 with on the budget, because I think in many instances some of
5 our efforts, as Senator Bowen was suggesting, if we only look at
6 the cost outlay, but the cost is not without a context. That
7 the cost by itself is really not accurate because we don't know,
8 we don't have the benefit of the full cost benefit analysis.

9 So, whether it's homecare workers, it seems like
10 we can't afford that, and we want to collapse those costs per
11 unit, but it's not going to be a savings if we don't factor in
12 costs that will emerge from additional emergency services, from
13 additional placing in nursing homes, for a whole range of other
14 costs that will seem like, well, this costs much so we've got to
15 cut it, but then we don't pay attention. It's really not in
16 fact an accurate representation.

17 Two other points, three points. I'm one of those
18 old school persons, as the young people say. So, a laptop, my
19 staff will tell you, there's not a computer in my office. You
20 visited me. It wasn't just because we were moving our furniture
21 in, but I'm more comfortable with paper. So, I want the Post
22 Its, and the paperclips, and the marker. I'm surprised because
23 normally I still have those legal pads from law school.

24 In terms of the Members, I think it's important
25 for us to have that access.

26 I do have a question with respect to responses.
27 I know that the Governor's office and the Governor is frustrated
28 with formulas that have been created by the people. Prop. 98 is

1 one example.

2 But I would like to hear your response in terms
3 of, if we are opposed to autopilot funding, right, because it
4 takes away discretion, I want your feeling on autopilot
5 reductions, across the board reductions, because I think, again,
6 it removes from the Legislature the discretion that we've been
7 elected to exercise.

8 MR. CAMPBELL: Let me jump in with that, then
9 I'll circle back to comment on your three points.

10 As to the autopilot, the idea that the Governor's
11 Constitutional Amendment would implement is actually the closest
12 we can do, or I could imagine, of reflection of the
13 prioritization of the needs of the state because it carries
14 through the previous year's budget.

15 Right now, we end the fiscal year on June 30th,
16 and if we don't have agreement, we don't have a budget. That
17 has some pretty bad consequences, among which are we get a very
18 bad bond rating. We have uncertainty in our long-term
19 planning.

20 The key part of the Governor's Constitutional
21 Amendment proposal is that we carry through the previous year's
22 budget. And that previous year's budget, obviously, represented
23 a compromise between all the political branches in what the
24 priorities should be for the people. So, that's going to happen
25 until the moment when a new budget is approved. When the new
26 budget is approved, then that reflects the more recent
27 expression of the people's will.

28 The only consideration where the across the board

1 comes in is if revenues have fallen so that you can't afford
2 last year's budget, last year's expenditures.

3 But think this through with me. I'll try my best
4 to convince you. I hope I succeed, but if not, I certainly
5 respect your difference of opinion.

6 That if you have equal percentage reductions in
7 all of the categories that are on the table, you reflect
8 identical relative proportions. That's very close to the will
9 of the people.

10 The model before Governor Deukmejian was that the
11 Governor of the state would have this authority. It was given
12 up in the last year of Governor Jerry Brown's administration.
13 So in this context, the old law used to be, before the last year
14 of the Jerry Brown administration, was that you would give the
15 Governor this authority to reduce.

16 And I tell you, that would be subject to the
17 criticism that the Governor is trying to arrogate to himself the
18 authority to make these decisions. It might still be better
19 than the status quo, in fact probably would.

20 But I'm at pains to suggest strongly that keeping
21 the relative expenditures in all categories as they were the
22 last time the budget was approved is respectful of the will of
23 the people, and respectful of the priorities that were set as of
24 the most recent way we have of measuring them.

25 I could not in my mind come up with any
26 alternative that worked better in that regard. Would we create
27 a panel of wise people who would make these decisions, or give
28 it all to the Governor? All of that would be inferior to the

1 expression of the relative priorities from the previous year's
2 budget.

3 Relative to your first question about the
4 expenditure that happened when we were flush, Prop. 98 is the
5 biggest example, that when we were expending more and more
6 because of Prop. 98 formula, we were building the base. That's
7 the aspect which then stays with us.

8 When we dropped into a Test Three Year, because
9 of a drop, a precipitous drop in revenues, we nevertheless had
10 this maintenance factor which stuck, which stayed there. And
11 so, when we begin to have some new revenue coming in, which we
12 do now, we find 53 cents of every dollar is spoken for because
13 of the maintenance factor. That's the best example I can give.

14 So, your recollection of the time I do not
15 quarrel with, because it was done by operation of Prop. 98. It
16 wasn't done, at least in this area, by new legislation. It was
17 done by existing legislation which, in building up the base,
18 tied our hands, your hands and ours, for the years to come, the
19 base constantly building, irrespective of an evaluation of the
20 needs of schools in any particular context. It was a formula.
21 And now we find ourselves dictated to buy that formula.

22 And lastly, as to your point about preference of
23 paper, I told you, I'm old-fashioned, too. But since I
24 represented Silicon Valley, I'll have to say, I'm shocked,
25 shocked, that there is not a computer in your office.

26 [Laughter.]

27 MR. CAMPBELL: And that this has to be remedied
28 for the sake of jobs in California.

1 [Laughter.]

2 SENATOR CEDILLO: Some say I'm stubborn, but I
3 refuse to accept that.

4 Let me go back to that period of 2000, '99,
5 because I do, and this haunts me, because I did not agree with
6 this.

7 Clearly, on the question of the vehicle license,
8 in terms of a policy proposal of giving money back to the
9 people, he has a passage lane that needs to be built, Senator
10 Ashburn. I have about 2.4 miles of freeway to be completed. If
11 done so, it is considered the biggest fetter on productivity in
12 Southern California. And yet, we made a policy decision that we
13 basically said, "Take your \$200 and buy a shovel and some sacks
14 of sand if you want, that our highways or a voucher, and maybe
15 you can get a security guard when you need one, or maybe you can
16 find a tutor, or someone to come and help you."

17 That's why I want to be sure that we're accurate
18 about how we evaluate decisions made in 2000 and '99, because I
19 think we're haunted by the lack of leadership in how we did not
20 exercise enough leadership and appropriately exercise our
21 discretion during that time period.

22 You talk about job creation, and Mr. Ashburn
23 talked about job creation within the Department of
24 Transportation.

25 I am concerned. I have sat in a couple hearings
26 on the bridge, the failure for us to receive timely reports from
27 the departments so that we could know that there were overruns.
28 We were required to receive those and we have not. And that's

1 important for us, for us to exercise our discretion, and it's
2 just incredible. I have a concern about that because again,
3 every time we spend too much money on one project, it means that
4 Mr. Ashburn and I continue to wait for important linkages for
5 our constituents.

6 I think that's it. The last thing is, I will say
7 to you, though, as much as I enjoy and look forward to meeting
8 with him shortly, your survey of the Chief Executive Magazine,
9 I'm very fearful. And what I appreciate about you is your
10 candor, and I know that you will be very honest about this. I
11 appreciate your response on this. I understand better your
12 response on the automatic, autopilot reductions.

13 But I am very concerned, and I will say this to
14 you, and I'm glad, and Mr. Ashburn has pointed out that we need
15 to construct this culture that's pro-California, that is pro-job
16 creation, that that is key.

17 But I think that your survey in some respects
18 reflects an effectiveness of messaging by the Chamber, that it
19 ultimately may do us more harm than good. Many of these CEOs
20 who responded in Chief Executive Magazine may be just responding
21 to a very permanent, almost hand-tie-California message that's
22 being created, and it's not really helping the matter.

23 That's my final thought. And with that, I will
24 move --

25 CHAIRMAN PERATA: Senator Ashburn has another
26 thought.

27 SENATOR ASHBURN: I just have one further --

28 SENATOR CEDILLO: Without further delay, I'm

1 prepared to move.

2 [Laughter.]

3 SENATOR ASHBURN: We talked about, you know,
4 continuing appropriations as part of a plan for the future.

5 There is a serious problem that I think has gone
6 unaddressed with the budget. And that is that for all of the
7 discussion, pain, and time that is consumed in the adoption, the
8 final passage of a budget under the current situation, that
9 budget is basically ignored. And I would point to two specific
10 areas.

11 One would be Corrections, where you've got
12 enormous overexpenditure of the authorized budget, and in
13 MediCal payments, which are running hugely in excess of
14 authorized.

15 So, we labor in the Legislature, along with the
16 Department of Finance and the Governor, to come up with a final
17 budget, and then it's adopted, and then it's signed, and then
18 it's ignored.

19 So, I'm wondering how under the Governor's reform
20 you deal with continuing appropriations when you've got runaway
21 -- there's all kinds of problems built into that?

22 MR. CAMPBELL: I can speak to Corrections a
23 little bit better than I can on MediCal because this was an area
24 of great focus in the first year of the Governor's
25 administration.

26 I can tell you that early on, an order was given
27 that this had to stop. And that to the best of my knowledge,
28 and I've checked with the program budget managers on this,

1 Corrections has lived within the numbers that they gave us, plus
2 population growth, over this last year.

3 I do grant your point that there were some
4 serious disagreements prior to that. But from what I've been
5 told, and I have no reason to disagree, the management since
6 then has come in under the numbers as they projected with the
7 population growth as the only adjustment. So, that shows what
8 can be done.

9 Your identifying the problem as you have, I think
10 the answer is to have honest, hard-working cabinet secretaries
11 who are held to account if they engage in that kind of conduct
12 intentionally. I mean by held to account, they should not be
13 submitting false numbers. But to the best of my knowledge they
14 are not.

15 And so, I'll end my response, but particular
16 reference to Senator Cedillo, when I was practicing law with
17 Senator Bowen, if the court is going to rule in your favor, get
18 out of court quickly.

19 [Laughter.]

20 CHAIRMAN PERATA: I'm loathe to ask one final
21 question but I'm going to.

22 Your office recently completed and released an
23 audit of OCJP, and the audit unearthed lots of serious problems.

24 The problem, as I understand it, with audits
25 generally administered by the Department of Finance is that you
26 have to be reimbursed by the agency. It's a little
27 counter-intuitive. I mean, if the IRS wants to audit you, you
28 don't ask them for permission and then pay them.

1 So, we're giving some very serious consideration
2 to augmenting your budget -- yes, you heard me correctly,
3 augmenting your budget -- so that you could have more
4 independence in your ongoing audit responsibility.

5 Would you favor that or not?

6 MR. CAMPBELL: I think we have the independence.
7 As I was trying to say in my response to you, we don't audit
8 only upon request. We do have the authority to audit on our
9 own --

10 CHAIRMAN PERATA: You just don't have the money.

11 MR. CAMPBELL: -- and the question is, of course,
12 money and available resources.

13 What we try to do is have an ongoing cycle of
14 audits, and we're following that cycle. But we respond to news.
15 We respond to legislative inquiries. We respond to the changing
16 circumstances.

17 And to me, in my time in this position, it's not
18 been unworkable. It has, it seems to me, to be functioning.

19 As to who pays for it, that the agency pays for
20 it is no different than a corporation which would pay for its
21 own outside audit. And then you expect the outside auditor to
22 be honest and do the job without regard to the fact that the
23 payment comes from the entity being audited.

24 CHAIRMAN PERATA: I'm not going to stipulate to
25 that, the outside auditors being honest.

26 MR. CAMPBELL: We have many examples of bad
27 recent behavior, there's no question, but I was privileged to
28 serve on the Board of the American Institute of CPAs, and

1 really, I don't know if 99 percent is the right number, but the
2 overwhelming majority of audits in publicly held companies are
3 done in an absolutely professional manner, even though they are
4 paid for are by the companies.

5 So, I don't see an inherent problem there. The
6 issue is, is the auditor really independent, and I have no doubt
7 the Department of Finance is really independent.

8 CHAIRMAN PERATA: I don't think that's in
9 question.

10 I do know that Senator Ashburn has a very big
11 interest in having Caltrans audited after what he just said.

12 And I would say, though, that you don't have as
13 many problems with bugs and stuff if you build roads in
14 civilized communities, you know.

15 [Laughter.]

16 CHAIRMAN PERATA: You go out to the wilderness,
17 you come up with any manner of problems.

18 MR. CAMPBELL: That's right.

19 CHAIRMAN PERATA: We're going to conclude now. I
20 know people would like to come and give you their best wishes,
21 but I've noticed that the Governor's flotilla just left.
22 They're a little worried about this going on too long. They
23 always think that might mean you're in trouble. So, they have
24 other things to do. Bonnie, I'm sure, has to go somewhere else.
25 Oh, this is your job.

26 I'd like to ask anybody who is interested in
27 coming in support, if you want to come up, if you're here and
28 you get credit somehow, or you're in the Department of Finance,

1 or you want to get into the Department of Finance --.

2 [Laughter.]

3 MR. CAMPBELL: Can you rephrase that?

4 CHAIRMAN PERATA: I would understand that, but
5 it's not necessary.

6 Having welcomed you in that manner, would anybody
7 like to come in.

8 MR. CAMPBELL: I've not asked for any.

9 CHAIRMAN PERATA: Oh, good. I keep liking you
10 better and better.

11 Anybody in opposition?

12 Hearing none, we have a motion.

13 Would you like to close, or you closed before by
14 saying, "Get out of Dodge."

15 MR. CAMPBELL: I'm grateful, Mr. President, and
16 grateful, Senators, for your time and your support.

17 CHAIRMAN PERATA: Thank you.

18 Secretary, please call the roll.

19 SECRETARY WEBB: Senator Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

22 SENATOR BOWEN: Aye.

23 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

24 SENATOR CEDILLO: Aye.

25 SECRETARY WEBB: Cedillo Aye. Senator Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Senator Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: Congratulations.

3 MR. CAMPBELL: Thank you.

4 CHAIRMAN PERATA: We're going to take a
5 five-minute break.

6 [Thereupon a brief recess
7 was taken.]

8 CHAIRMAN PERATA: We have three more
9 confirmations. We'll probably expedite these in fairness to
10 everyone.

11 First is the Ruth Green, and this older gentleman
12 is who, Ruth?

13 MS. GREEN: This is Gavin Payne, and he's here to
14 introduce us, if that's all right, then he has to leave.

15 MR. PAYNE: This older gentleman who had an
16 august high school teacher.

17 CHAIRMAN PERATA: Mr. Payne.

18 MR. PAYNE: If I may, thank you, and thanks for
19 allowing me to speak a little bit ahead of time.

20 I appreciate you allowing me to be here today.
21 I'm Gavin Payne. I'm Jack O'Connell's Chief Deputy
22 Superintendent, and I'm here today on his behalf to sport the
23 confirmation of Board President Ruth Green, Johnathan Williams,
24 and Glee Johnson.

25 Overall, Superintendent O'Connell has been very
26 impressed with Governor Schwarzenegger's appointments to the
27 State Board. They're smart, caring individuals who've
28 demonstrated a deep knowledge of education and a commitment to

1 our high standards in California.

2 They have come to the Board ready to quickly and
3 intelligently analyze and decide on the many complex issues
4 before them. This is especially important for us, as fairly new
5 people to the State Department of Education, only two years into
6 the job.

7 Ruth Green, a long-time friend of the
8 Superintendent and from the same area that he used to represent
9 as a State Senator, has been a great leader of the Board. She
10 has an ability to bring people of varying viewpoints together in
11 the best interests of California students, and she's a strong
12 and effective public voice for the Board and its policies.

13 Johnathan Williams is a true leader in the
14 charter schools movement who has single-handedly improved the
15 lives of hundreds if not thousands of children in Los Angeles
16 directly every day. While he's a strong advocate and voice for
17 charter schools, he brings the same passion and dedication to
18 all public school children as a member of the State Board.

19 And Glee Johnson is not only the wife of a valued
20 member of my staff, she's a long-time advocate for public
21 education, and a long-time friend of Jack's and mine. She's
22 been involved in education policy for many years, frankly for
23 some of those on the other sides of issues, but we've always
24 enjoyed a good relationship. She listens. She has a deep
25 knowledge of the issues before the Board, and a proven
26 dedication to California's students, all of California's
27 students.

28 So, Members of the Committee, I urge your

1 confirmation on behalf of Jack O'Connell of these three Board
2 members, and thank you for allowing me to speak.

3 CHAIRMAN PERATA: Our pleasure, thank you.

4 Ms. Green, welcome.

5 MS. GREEN: Thank you so much.

6 Good afternoon, Chairman Perata and Members of
7 the Committee. It is an honor and a privilege to come before
8 you today for your consideration of my appointment to the State
9 Board of Education.

10 And thank you to Gavin Payne and Superintendent
11 O'Connell for the kind introduction, and to all the people who
12 wrote letters of support on my behalf.

13 I believe strongly in public education. As a
14 policy maker, parent, taxpayer, and a product of the public
15 schools, I see education as a means to strengthen our society
16 and economy by providing an opportunity for all of California's
17 students. Quality public education enables the expansion of the
18 middle class, particularly among disadvantaged populations. It
19 means closing the achievement gap by attending to our neediest
20 students. And one of education's primary responsibilities is to
21 ensure a literate populace so all citizens can fully participate
22 in our democracy.

23 It is a great honor and a responsibility to serve
24 on the State Board of Education. And as our first year draws to
25 a close, I recognize that it is one of the most important tasks
26 I have undertaken. The Board has worked on a variety of issues,
27 such as approving instructional materials for special education
28 referral reduction program in Reading First, adopting the

1 performance standard levels for the new Grade Five science test,
2 as well as approving rigorous criteria for No Child Left Behind
3 supplemental education service providers.

4 There are many challenges ahead, and I hope to
5 continue to serve. I believe in the value of public service,
6 not only at the state level but in my own community. I have
7 worked on the boards of nonprofits such as a nationally
8 recognized child abuse prevention program which seeks not only
9 to protect innocent children, but provide counselling for
10 would-be offenders to break the cycle of violence.

11 I have served on a local foundation, and have had
12 the privilege of awarding scholarship money to a diverse group
13 of deserving college-bound students.

14 I have spent a great deal of time evaluating and
15 then awarding grants to many fine nonprofits serving the Santa
16 Barbara community. As a member of the local board of education,
17 I was committed to working collaboratively with fellow board
18 members as well as teachers, administrators, principals to focus
19 on our students' needs. I was part of a leadership team that
20 consistently improved student performance while grappling with a
21 difficult budget situation because of the state's fiscal
22 problems and our own declining enrollment.

23 I served for three years on Santa Barbara
24 District's English Language Learner Committee, serving our large
25 English language learner population. I listened and worked with
26 our ELL parents about their concerns, challenges, and desires
27 for their sons and daughters. And based on the committee's
28 input, the district made substantial changes to the programs

1 serving these students with strong results.

2 Another priority for me at the local level was to
3 help our special education students. I was determined, and
4 still am, in helping this segment of our population reach their
5 maximum potential. Working collaboratively with the principal
6 of a Title One elementary school, the district started a pilot
7 program for learning disabled students at risk for reading
8 failure. This program enables early identification and targeted
9 instruction for these students so we could catch them before
10 they could fail. It has been highly successful.

11 Achieving success is only possible when the focus
12 remains on academic achievement. This has always been my top
13 priority. And it has been my experience that our academic
14 content standards has increased student achievement since its
15 inception. At the core of the standards based system is the
16 powerful idea that all children can learn and deserve the same
17 educational opportunity. This contributes greatly to the goal of
18 equity, because for the first time we have clear, high
19 expectations for all students, regardless of their background or
20 what neighborhood they live in. Our content standards puts
21 those high expectations into practice.

22 The standards system provides the tools with
23 which our students can succeed. Not only is there additional
24 instructional support for our at-risk students, but there are
25 additional materials for our gifted students as well.

26 I want to acknowledge, though, that the state
27 faces significant challenges in increasing student achievement,
28 and there are still schools whose performance is unacceptably

1 low. But considerable progress has been made nonetheless.

2 While the growth has slowed this year, California
3 schools have made gains the last five years, not only with
4 increasing the number of students in the proficient category,
5 but also equally importantly, students are moving out of the
6 bottom categories as well.

7 And I had to add, additionally there is good news
8 this morning regarding our continued increase in numbers of
9 English language learners reaching English proficiency.

10 We still have a long way to go, but the point is
11 there are schools and districts that are proving what is
12 possible under a system that is clear and coherent, and provides
13 the tools and support with which to succeed.

14 I want to thank the Senate for their bipartisan
15 support of the standards based system over the years, and look
16 forward to working with the Legislature on behalf of
17 California's children.

18 And thank you for considering my appointment to
19 the State Board of Education.

20 CHAIRMAN PERATA: Thank you.

21 I have a couple of questions that I will address
22 to each and comments, so I can say them at the threshold.

23 But first, let me thank you for what you do. You
24 put in a lot of hours for a hundred bucks per diem. So, we know
25 you're not in it for money.

26 MS. GREEN: Thank you.

27 CHAIRMAN PERATA: And probably not for the
28 prestige either any more. It's very difficult.

1 I'm concerned about two things. These are issues
2 that I brought up at the last confirmation hearings as well.

3 One is, I am troubled by the High School Exit
4 Exam and the way we treat the developmentally disabled. It
5 seems to me that combinations are one thing, but I was told, and
6 I don't know if this is apocryphal or not, that a student who
7 was diagnosed dyslexia was not able to use a calculator,
8 permitted to use a calculator. That a blind student can have
9 math questions read aloud but not reading questions since it is
10 a reading exam.

11 I think we probably could all agree that the
12 purpose of this is to determine proficiency, and that not
13 everybody comes to the starting line equally.

14 MS. GREEN: I agree.

15 CHAIRMAN PERATA: I understand there are
16 discussions going on. Maybe you could shed some light on
17 that.

18 MS. GREEN: Well, with the California High School
19 Exit Exam, first let me say that I support the Legislature's
20 desire to have a High School Exit Exam, enacted through, I
21 think, then-Senator O'Connell, because we want our diploma to
22 mean something. And that's very important. We want basic
23 competencies in mathematics, reading and writing, and that's
24 important.

25 Additionally, having the High School Exit Exam
26 has focused districts, schools' and districts' attention on our
27 neediest students. It was one of the primary forces behind
28 focusing our resources and efforts there. So, for that reason I

1 applaud the High School Exit Exam, I agree with it.

2 With what your issue is, Senator Perata, I agree
3 that we must have a way to accommodate our special education
4 students in regards to the High School Exit Exam. But let me
5 tell you first, there is a waiver policy. It was not enacted
6 through initial legislation but as a State Board policy, and
7 it's a waiver policy that's currently in place.

8 And that is where, if you have a diploma-bound
9 student who has, through their IEP, needs a calculator, for
10 example, or a reader, they are allowed to use that. And then,
11 if they pass both the reading and the mathematics on the High
12 School Exit Exam, then the local governing board of the district
13 will make the determination to allow a waiver, and then that is
14 granted. So that is a safety valve, albeit not a very large
15 one.

16 I look forward to the recommendations from the SB
17 964 Committee. They -- this is their charge, to look at how we
18 can accommodate our special education students in a way that is
19 fair and still keeps the strength of the California High School
20 Exit Exam. I am very much looking forward to their report which
21 is due, I believe, May 1st. And so from there, from their
22 recommendations, the State Board can -- our policy can be
23 informed further and we can take action.

24 One area I'm particularly interested in is to see
25 what other states are doing, because I know that Massachusetts
26 also has high standards, but they -- and they additionally have
27 a 95 percent passage rate on their High School Exit Exam. So,
28 I'm very interested and have asked staff find out about what is

1 going on in Massachusetts, as well as our 964 report.

2 So, that's the information that I have at this
3 time, but I agree with you. A compassionate look for these
4 students in regards to our High School Exit Exam is needed. So,
5 thank you.

6 CHAIRMAN PERATA: At the risk of sounding
7 obvious, the reason that Massachusetts is doing so well is they
8 won the World Series and the Super Bowl.

9 MS. GREEN: Of course.

10 [Laughter.]

11 CHAIRMAN PERATA: Somehow people don't get it.

12 One other question, and this is No Child Left
13 Behind. My concern there, and you've addressed this in your
14 opening comments, that we set a bar, a high bar for all,
15 regardless of life circumstances.

16 While I applaud that, I taught for 16 years so I
17 have a view of how people come prepared. And what I'm worried
18 about is that because the pressure is on the level of the bar
19 that's been set, and that the bar level is reflective of kids
20 who could get into CSU or UC, those are the qualification
21 standards, that there is an inherent probability that we're
22 going to be teaching to the standard and not to the student.
23 And that is just something that is troubling to me.

24 I know the Governor has a couple of voc. ed.
25 initiatives that he is bringing into legislation -- he's not
26 putting those on the ballot, but he's going to have Members of
27 the Legislature carry it.

28 I know his attitude about voc. education and I

1 share it.

2 But it seems to me that, once again, we may be
3 putting greater emphasis on theory than on reality and creating
4 an inherent classism there.

5 There is a lot of difference. I taught in a
6 school. We used to do tracking, you know, X, Y, Z. We don't
7 disguise it by changing the letters. The kids said, bright,
8 dummies, they didn't fool many people.

9 But when I taught government, I wouldn't allow my
10 class to be tracked, principally because I wanted everybody to
11 know how the person next to them thought, because they'd be
12 voting just like you. But it was a lot more work because there
13 was a different way of methodology there. So, that concerns
14 me.

15 And in the general trend that we have in this
16 state to teach to the tests, I hear from a lot of teachers who
17 are very troubled that there's too much pressure being put on
18 teaching to the test, which ultimately means you are teaching
19 the test. I don't consider it education as much as, you know,
20 you-memorize-an-eye-chart testing.

21 So, you can go off the cuff. You're going to be
22 there. There's no doubt in my mind that your wonderful work,
23 and the other members here, you will be rewarded with --

24 MS. GREEN: It's a lot of money; right?

25 CHAIRMAN PERATA: -- with lots of money and more
26 headaches.

27 But those are real concerns that I have.

28 And the more we have a term-limited Legislature,

1 where we have to just punctuate a problem and then assume. I
2 think we overreacted in '90. We had a guy who wanted to be the
3 education governor. We had some extra money, and we just blew
4 the walls out.

5 And I think now the aftermath of that, you have a
6 chance to study and look at it, the Exit Exam's coming, No Child
7 Left Behind, it's going to fail a lot of school districts. And
8 the way we treat school districts in failure is, we take money
9 away from them, we otherwise punish them. It's a great way to
10 get people to perform.

11 So, fix it, would you?

12 MS. GREEN: Okay. Could I just wave that magic
13 wand.

14 CHAIRMAN PERATA: Those are something that we'll
15 be looking at very carefully and would applaud your efforts on
16 that.

17 MS. GREEN: Thank you very much.

18 CHAIRMAN PERATA: Members?

19 SENATOR BOWEN: You took my questions.

20 SENATOR BATTIN: Move the confirmation of the
21 nomination.

22 CHAIRMAN PERATA: It's the most articulate he's
23 been.

24 Anybody here that would like to come forward, or
25 did you ask people to stay home, too?

26 MS. GREEN: Yes, I did.

27 CHAIRMAN PERATA: I want to thank you.

28 We have a motion to confirm. Call the roll,

1 please.

2 SECRETARY WEBB: Senator Ashburn.

3 SENATOR ASHBURN: Aye.

4 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

5 SENATOR BOWEN: Aye.

6 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

7 SENATOR CEDILLO: Aye.

8 SECRETARY WEBB: Cedillo Aye. Senator Battin.

9 SENATOR BATTIN: Aye.

10 SECRETARY WEBB: Battin Aye. Senator Perata.

11 CHAIRMAN PERATA: Aye.

12 SECRETARY WEBB: Perata Aye. Five to zero.

13 CHAIRMAN PERATA: Congratulations.

14 MS. GREEN: Thank you very much. I appreciate
15 it.

16 CHAIRMAN PERATA: Sergeant, would you call
17 Governor Dymally's office. He'll be here to present the third
18 of the Board of Education members.

19 Right now I'd like to call up Glee Johnson.

20 Ms. Johnson, welcome.

21 MS. JOHNSON: Good afternoon, Senator Perata,
22 Members of the Rules Committee.

23 My name is Glee Johnson. I'm honored to have
24 been appointed to the State Board of Education by Governor
25 Schwarzenegger. Needless to say, I'd be even more honored if
26 you confirmed that nomination today.

27 As most of you are aware, I worked in and around
28 the Capitol for many years in education policy. And having said

1 that, sometimes I'm not sure whether I'm apologizing or
2 bragging.

3 However, there is something I was part of in the
4 mid to late '90s that I'm very proud of. In fact it's the main
5 reason I am on the State Board, and that's the standards-based
6 accountability system we do have in California, not
7 withstanding, I understand, your reservations.

8 From its very rudimentary beginnings as an
9 off-the-shelf test, through its growth into a set of academic
10 standards that are among the best in this nation, and an
11 assessment system that has evolved from that off-the-shelf test
12 to one that's based on our content standards, standards that
13 must be the basis for our textbooks and instructional materials,
14 standards that are reinforced in our professional development
15 programs, and some day, God willing and with enough prodding,
16 even the basis for our credentialing programs at CSU and UC so
17 they don't have to retrain them fresh out of school on the
18 standards.

19 There are those who would argue about whether the
20 standards are the right ones, whether the textbooks accurately
21 reflect those standards, or whether the tests test those
22 standards, or whether the training of our teachers is what it
23 should be.

24 But from my perspective, those are wonderful
25 discussions to have. Let me explain that a little more fully.

26 What you have to appreciate is that prior to this
27 system we had nothing. We had a statewide assessment system
28 that didn't tell the parents how their kids were doing. It

1 didn't tell teachers whether their students were learning
2 whatever it was they were supposed to be learning, mostly
3 because we've never had a clear picture what it was that we
4 thought they should be learning.

5 Schools were compared to each other in an annual
6 ritual of what I would call media coverage and frenzy that
7 purported to tell parents and their communities how they were
8 doing based on so-called expectancy bands. Expectancy bands
9 were a Sacramento creation based on the notion that you
10 shouldn't expect as much from some students or schools or
11 districts because they had certain characteristics. So, we only
12 compared so-called poor schools to poor schools, rich schools to
13 rich schools. And no one could tell what was actually going on.
14 It was a really horrible fraud, one that caused then-Governor
15 Wilson to decide that an off-the-shelf test, with all of its
16 inherent limitations and warts, was preferable to this pretense
17 of an accountability system.

18 So for me, discussing what students should be
19 learning and how we should be measuring it is the right
20 discussion, no contest. If you have an accountability system,
21 you should have some confidence in what its components are, and
22 whether those components are mutually reinforcing.

23 As you well know, most of the education issues we
24 deal with in Sacramento are based on adult problems. The lens
25 we have here is one where the school system is an employer first
26 and an institution that provides learning second. We argue
27 endlessly about collective bargaining and school finance.

28 Those are legitimate discussions but we can't

1 lose our focus, and that is why the accountability system, from
2 my perspective, is so important. It keeps our eyes on the
3 prize: Are our kids learning anything.

4 So, let's talk about what our kids should know
5 and how we should assess that knowledge, because the bottom line
6 is that we all want our education system to produce citizens who
7 can function in this wonderful and complicated society that is
8 California.

9 Frankly, that is why I want to continue serving
10 on the State Board, where our focus is curricular in nature, and
11 our student achievement is what we have been entrusted with
12 measuring.

13 I suppose I could go on at great length about my
14 background, why I feel that I am qualified to serve, but in the
15 interest of time and based on my belief that all of you can
16 read, I'll skip that part. You have the written responses.

17 I'd be happy to answer any of your questions, or
18 at least attempt to answer them.

19 CHAIRMAN PERATA: I think your statement speaks
20 for itself, thank you.

21 Any questions from Members?

22 SENATOR CEDILLO: I would just say that there is
23 a premise that we see our educational institution as employer
24 first and as education institution second.

25 I just want to assure you, I consider that a
26 false premise. I don't know.

27 MS. JOHNSON: Present company excluded.

28 SENATOR CEDILLO: No, I'm just speaking for

1 myself, because I cannot imagine, or I do not share that
2 perspective, and I want to say that to you. I consider that a
3 false premise for people who do do that.

4 I do, though, have a kind of, say, market
5 approach to some of this, in that if you do have best employment
6 practices, and you are providing a service, if you did look at
7 students as constituents or consumers, that that does create an
8 environment for you to have the best product.

9 But like I said, I don't share that perspective,
10 so I can't speak for my colleagues. I think it's fundamentally
11 a flawed and a false premise. I think that our educational
12 system is not designed as an employment public works project.

13 MS. JOHNSON: I agree wholeheartedly. And that
14 was -- I'm just reflecting on my years mostly as a staffer in
15 this building and what a lot of the arguments, the bills, the
16 debates ended about being was.

17 The frustrating thing for me was, it was very
18 seldom a conversation, how does a kid learn something? How do
19 you make sure that works? It really was all about issues of
20 employer-employee relations. That's what came to Sacramento.

21 So now, we have an ability, I think, to focus on
22 student achievement, which puts Sacramento back into looking at
23 what's important.

24 SENATOR CEDILLO: Let me ask you a couple
25 questions about that.

26 How is the Board going to spend the recently
27 appropriated 30 million in supplemental funding to acquire
28 better instructional materials for English language learners?

1 MS. JOHNSON: The Department, we did have a brief
2 report on that informally. I think there's an information memo.
3 I've seen some. Maybe I just know that through my informal
4 channels in the Department.

5 There have been some questions about how to do
6 it, how to get it out. The goal is to have, I believe, in May
7 we were supposed to get a list of people who would like to
8 provide these materials.

9 It's been a difficult process to implement
10 because it is different from the normal process. And
11 unfortunately, with sort of the bureaucratic approaches being
12 taken, you want to make sure that the dollars are spent as well
13 as possible. The Department is not used to administering this
14 kind of function. It's normally done through the auspices of
15 the Curriculum Commission. So, they are looking for materials,
16 looking for ways to, I think, evaluate the materials in a way
17 that they're not used to doing.

18 But my understanding is, the target is for May
19 for some action on that. I don't know if the money will
20 actually go out in May. My guess is it won't. But that's the
21 first time it will really be before the Board.

22 SENATOR CEDILLO: The May date is a May '05 date;
23 we're not talking about May '04?

24 MS. JOHNSON: No, May '05.

25 SENATOR CEDILLO: So that's your first benchmark,
26 is that there'll be a report, a presentation to the Board?

27 MS. JOHNSON: I think that's when some of the
28 information will come forward about how -- what kind of

1 submissions we're looking for, because obviously these are going
2 to be different. They're not going to be -- our normal adoption
3 process is for a complete set of books that normally are
4 delivered by the pallet in terms of evaluation process. And so
5 now, this is a totally new thing, so I think the Department's
6 just trying to -- I'm sorry Gavin left. He might actually have
7 a better handle on that than I do.

8 SENATOR CEDILLO: And the same response applies
9 to the question of how we make sure we get this to the teachers
10 at the site? How we get the materials to the right teachers in
11 the right classroom?

12 MS. JOHNSON: Well, I think what'll be done is,
13 the way the language was set up is that there's an appropriation
14 that'll actually be given out as a resource to districts based
15 on a per kid amount, I think. And our job is to line up the
16 materials, and the Department's actually more in charge of that
17 than we are, to find out what the materials are. And we will
18 say, "Here they are, and you can spend your dollars on these."

19 SENATOR CEDILLO: So, once approved, then it
20 follows kind of a routinized local initiative?

21 MS. JOHNSON: Right. To some extent it mimics
22 the current adoption process, in that the state provides, in a
23 sense, a list of what's out there and what's acceptable. And
24 they will be given an apportionment with what's taken in by the
25 materials.

26 MS. BARKETT: I could help out a little bit.
27 I'm Cathy Barkett, and I am the new Executive Director of the
28 State Board of Education.

1 The 30 million additional money for materials for
2 English language learners, the way the legislation was written,
3 it does not come to the Board until the district has all ready
4 decided what they want to purchase. So, this is something that
5 will be coming before the Board.

6 But the process right now is that the districts
7 have to fill out a form saying what they'd like to purchase.
8 That then is evaluated by the Department to see that there's an
9 alignment between the book they want to purchase, or the CD, or
10 whatever, and the English language arts standards, as well as
11 the ELD standards. It has to align to at least one of each. And
12 then the Department will send a recommendation to the Board, and
13 the Board will approve or disapprove the appropriation for each
14 district.

15 Then the appropriation will be made to the
16 district, and then the district works with the publisher to get
17 those materials in the hands of teachers as quickly as possible.

18 SENATOR CEDILLO: So you have a schedule for
19 that?

20 MS. BARKETT: Yes. March 1 is the deadline by
21 which districts must submit a form to the Department. Those
22 materials will be then reviewed in March and April. They'll
23 come to the Board at the next available meeting, which will be
24 May. And as soon as the Board makes that decision, then the
25 apportionment process will start. Districts will be notified
26 how much money they have, even before the check -- whether
27 there's an approval or not, even before the check gets there.

28 And then they work with the publisher to gets

1 those materials as quickly as possible. But we're probably
2 talking about fall implementation, the way the time line was set
3 up.

4 SENATOR CEDILLO: I'm sure this is written down
5 some place so we can get a copy?

6 MS. BARKETT: I'd be happy to get you that.

7 SENATOR CEDILLO: So, what's your sense about how
8 we're responding in terms of making sure there's adequate
9 materials for English language learners as the state transforms
10 itself demographically with the 100-plus one hundred languages
11 we're speaking?

12 MS. JOHNSON: Well, I think it's a much larger
13 question than about the materials.

14 And I think, in fact, I guess Ruth mentioned in
15 her remarks about the encouraging news we've gotten about the
16 English language acquisition and the steady improvements of
17 students who are mastering the language.

18 And in fact, there was sort of an interesting
19 thing that I had noted when the last High School Exit Exam
20 results came out, was that the kids who performed the best on
21 the High School Exit Exam were students who had been
22 redesignated. It may mean that the redesignation process is
23 being overly cautious, but nonetheless it is sort of a really
24 remarkable statement.

25 I think in terms of getting the materials that
26 teach children how to read, the focus is still on acquiring the
27 English language by the end of the third grade, and trying to
28 figure out ways to work with children who come in at different

1 points, because that's where the great difficulty is.

2 Luckily -- I don't know luckily -- but those are much smaller
3 numbers of students. Most of the kids do come into our system
4 in kindergarten, first or second grade and do move across I
5 won't say easily, but move across in some fashion.

6 I think we have just tried to focus still on
7 reading and reading in English as much as possible, trying to
8 work with -- in the classrooms. A lot of people will say over
9 kill, particularly teachers. We've done different ways of
10 focusing on reading.

11 You know, I guess I'll back up a little bit and
12 say from my own personal perspective what's sort of interesting
13 is, just the differences within the state on how we approach
14 English learners, because in Northern California, which is much
15 more what I'm familiar with, it's a much different kind of
16 equation than it is in Southern California. It took me a long
17 time to appreciate that. For instance, the classes that my kids
18 were in had a lot of different languages. There really wasn't
19 -- there might have been -- the plurality might have been
20 Spanish, but Russian kids, H'mong kids, different groups. And
21 in that setting it seemed to work that my kids were paired. You
22 know, they buddied, and so there were a lot of different ways
23 they tried deal with that in social interactions.

24 In Southern California, we have such an
25 overwhelming, other than pockets in Glendale where it's mainly
26 Spanish, then you have a different issue. You have a different
27 almost cultural perspective. And so, it's something I feel like
28 I'm learning about more all the time.

1 There needs to be some sensitivity to it, but
2 still nonetheless, I guess, I'm still a believer in bringing
3 people across and learning as fast as they can, whatever way you
4 can. Whatever method works, do it. And it looks like whatever
5 they're doing out there, and I don't know what -- I'm not going
6 to say anything provided the magic -- but it's really
7 encouraging to see the results we're getting.

8 I was actually -- worked with Senator Escutia on
9 the original bill for the English Language Development Test when
10 I was working for Marian Bergeson. And it's kind of interesting
11 to be out for six years, come back and see things -- some things
12 actually turned out right.

13 SENATOR CEDILLO: Finally, I just want to make
14 sure that we have the Lieutenant Governor, Congressmen, Assembly
15 Member Dymally sitting behind you, that the access to the public
16 to your meetings is accommodated. He is the author of the
17 Dymally-Alatorre, or is it Alatorre-Dymally Act, but there's the
18 importance to make sure that, particularly in a state like ours,
19 that access is accommodated, and that also requires language
20 availability for people who participate, and who want to
21 participate to express themselves in our democratic processes in
22 your meetings, and that you, the Board, are making those
23 accommodations appropriately.

24 MS. JOHNSON: To the best of my knowledge we are.
25 Certainly, if you hear differently, I'd welcome knowing that.

26 SENATOR CEDILLO: Thank you.

27 CHAIRMAN PERATA: Thank you.

28 Any other questions?

1 SENATOR ASHBURN: Just one, Mr. President.

2 And this could be addressed to any member of the
3 Board and all, and it has to do with the cost of textbooks.

4 Has the State Board considered the extraordinary
5 expense of textbooks? And is there a policy to do something, to
6 use what I would assume to be the extraordinary leverage of the
7 state to bring the costs down?

8 And by the way, the weight wouldn't be bad
9 either, especially since, you know, the Senators met my
10 14-year-old daughter the other day, a freshman in high school.
11 I can't lift her backpack. And many of the schools have done
12 away with lockers for other reasons.

13 SENATOR BOWEN: At least the curriculum's not
14 hollow.

15 SENATOR ASHBURN: Anyway, I'm very concerned
16 about that.

17 I think we ought to be able to -- we ought to be
18 able to set the price which we are willing to pay for textbooks
19 and not be dictated to my textbook publishers. And if it takes
20 a law to do that, I would think there'd be tremendous support
21 for it. And if it's a policy to accomplish it, are you prepared
22 to take it on?

23 MS. JOHNSON: Well, I think Cathy can express the
24 details more.

25 I think one of the issues -- the trouble is with
26 the leverage that a state like California ought to have, and
27 particularly since we do a statewide adoption -- Texas, there's
28 some others that do that. One of the problems, my

1 understanding, historically we've run into is that we do have
2 sort of a most-favored-nation pricing policy, but so does every
3 other state in the country. And so, the publishers end up --
4 actually they end up creating unique textbooks in some sense for
5 California because of the standards and the issues that I was
6 raising.

7 We've really -- I'm certainly willing to hold the
8 publishers' feet to the fire, but I do have to say, we've dumped
9 a lot on them in the last ten years also. We've said, "We're
10 not taking these vacuous textbooks any more. We really want
11 some things. We want you to tie instruction to it. We want you
12 to not only produce a textbook, we want you to be able to come
13 into the classroom and provide instruction to those teachers and
14 help them get through it."

15 I think Cathy can speak more specifically about
16 that, though.

17 MS. BARKETT: As a former textbook publisher and
18 now Executive Director of the Board, actually this is one of the
19 reasons why I came to the Board.

20 And I think your question is right on. The Board
21 holds a tremendous amount of power in this area because they
22 approve the criteria that textbooks publishers use to develop
23 their books. So, the more things we put into those criteria,
24 the larger the books get and the more expensive they get.

25 And before I was publisher, I was working for
26 California Department of Education, actually creating the
27 criteria. So, I've been on both sides of this.

28 And what we need to do, I think what I can help

1 the Board do, is carefully consider what we tell textbook
2 publishers we want in our books. That's one question.

3 The other question is an issue of supply and
4 demand. The fact of the matter is that teachers, educators,
5 gravitate towards exciting, good looking instructional
6 materials. You know, there are certain things they want to see
7 in there. And so, for the publishers it's kind of a crosswalk
8 between, am I going to be able to sell this, and the cost of
9 it.

10 But that being said, I would like for us to try
11 some administrative things to really see if we can bring both
12 the cost and the weight of textbooks down. And we will be
13 meeting soon with Senator Pavley's staff again to talk about
14 encouraging electronic versions so that we don't have that
15 weight issue.

16 SENATOR ASHBURN: I'm going to be very blunt
17 about this, unlike my usual, which is to say that, you know,
18 these books are updated so frequently that they are almost
19 obsolete in the edition by the time they're delivered.

20 They are put on the most expensive paper, with
21 full color pictures, with very heavy, you know, covers.

22 I think we ought to print them on newsprint. And
23 with the quality of printing today, you can put the color
24 pictures, you can put it on recycled inexpensive papers, and we
25 can throw the editions out.

26 Anything other than that is an outrageous waste
27 of the taxpayers' money, and it's unfair to the students.

28 I see textbooks every single day from my kids.

1 And, you know, I don't care what people want in terms of
2 gravitating towards something. It's your Board that has an
3 obligation to do something about this, and I expect that it be
4 done.

5 And if it's not done, the Legislature needs to
6 step in and do it.

7 But we ought to have the purchasing power of a
8 veritable nation in demanding what we demand, and we ought to
9 get it.

10 And I'm tired of excuses because I've asked this
11 question year after year after year since I've been here for
12 nine years, and everybody says the same thing, "Oh, yeah. Boy,
13 that's a big problem."

14 I don't think one single thing has changed. The
15 prices have gone up. The paper is just as slick. The colored
16 pictures are just as glossy, and the covers are outrageously
17 fancy, and they weigh so dang much the kids can't even lug them
18 around. It's got to change.

19 And I challenge the Board members who are here
20 and those who come after to do something about it.

21 MS. BARKETT: Thank you, Senator. We will look
22 at it.

23 The state does tell the publishers what kind of
24 paper to use. The state sets the standard for the
25 publishers.

26 SENATOR ASHBURN: Then we ought to change the
27 standard.

28 MS. BARKETT: So, that's what we need to look at.

1 SENATOR ASHBURN: I mean, I thought we were
2 environmentally conscious around here, and yet that paper, I
3 assume, comes from old growth redwoods or something. I mean, it
4 is exotic paper.

5 CHAIRMAN PERATA: So, you tell everybody, if you
6 don't want us to step in and clean this up, write it on rice
7 paper.

8 Okay, any other questions?

9 SENATOR BOWEN: Just one.

10 My question has to do with the peculiar
11 relationship or structure in California of the Superintendent of
12 Public Instruction, the Secretary of Education, and the Board of
13 Education.

14 When it comes to an issue like amending the
15 federal No Child Left Behind Act, which I know is something that
16 you're concerned with, who speaks for California?

17 MS. JOHNSON: Well, officially the State Board
18 speaks for California. We are the state education agency. But
19 we work with the Superintendent who is, among other things, the
20 Executive Secretary for the Board. The Department does the
21 work, and the Board, as having one foot in the administration
22 and one foot in the Department, also works with the Governor's
23 office and the Secretary's office.

24 So, we have tried to, for instance, we are
25 working on right now a response to a federal visit -- I guess
26 it's euphemistic for an audit -- and trying to work in a
27 collaborative fashion. But the Superintendent and the President
28 of the State Board will go back to Washington and try and

1 negotiate those things.

2 But we are -- we are the lead. On the other
3 hand, we are eleven people with four staff, and the Department
4 staff sit with the Superintendent. It has to very much be a
5 joint effort.

6 But in terms of the official who signs off on
7 what, it is the State Board.

8 SENATOR BOWEN: That really then depends on the
9 happenstance of working relationships, or philosophical
10 agreements or disagreements among the various parties.

11 What's your suggestion for making more sense of
12 that structure?

13 MS. JOHNSON: Well, my short version is a
14 Constitutional Amendment to square the whole thing away. But
15 living with the system we've got right now --

16 CHAIRMAN PERATA: Expand that.

17 MS. JOHNSON: My personal opinion? This
18 certainly doesn't speak for my appointing authority or anyone
19 else, but having worked in the building and looked around it for
20 a long time, it just doesn't make sense to me to have an
21 administrative agency as important as the Department not be part
22 of the Governor's cabinet and officially working that way.

23 I think with Jack right now, we have a golden
24 opportunity, this Board, and we've been working really well, but
25 most of you've been around long enough to know when those things
26 didn't work well.

27 I think ultimately the Governor is the one held
28 accountable. So, you know, that would be my personal

1 preference, would be to see a Constitutional Amendment to get
2 rid of the State Board, to get rid of the Superintendent, and
3 just put the Governor in charge of it and be done with it.

4 I think right now, though, we have a good
5 relationship with Jack.

6 SENATOR BOWEN: Term limits will take care of
7 that for you.

8 CHAIRMAN PERATA: Exactly. Max Rafferty could
9 come back.

10 [Laughter.]

11 MS. JOHNSON: Well, yes. It can happen any time.
12 It can happen with the appointments to the Board. It can happen
13 with any sort of a thing.

14 CHAIRMAN PERATA: Don't stop being candid.
15 You're doing great.

16 MS. JOHNSON: But I mean, I think right now,
17 we're trying to make the most of it with Jack, and I think the
18 Department people, all of whom, some of whom, still have scars
19 on their hides from some of the previous not so wonderful
20 relationships.

21 And I think all of us at this point see it's too
22 important to be messing around the who's on first, and who's on
23 lead, and that sort of a thing.

24 So in terms of if you're frustrated, and you want
25 access, whoever you're most comfortable with. If you want to
26 call Jack, call Jack. If you want to call me, call me. I think
27 any of those avenues will work. I think the Secretary's
28 accessible, any of the members of the Board that you happen to

1 have a relationship.

2 SENATOR BOWEN: It's not about me. It's really
3 about how anyone --

4 MS. JOHNSON: A normal person?

5 SENATOR BOWEN: A person who doesn't have a seat
6 at this horseshoe. I mean, we're a fairly rarified and
7 privileged position. We can generally get -- generally, not
8 always, get people on the telephone when we have a question.

9 But a lot of people wouldn't even know where to
10 begin --

11 MS. JOHNSON: Right.

12 SENATOR BOWEN: -- with such a -- I don't even
13 want to call it a three-headed monster because, first, it's not
14 a monster, and second, the Board with eleven members would make
15 it even greater than a hydra.

16 MS. JOHNSON: I was going to say hydra comes to
17 mind, but you're right.

18 Well, I think that is reflected by some of the
19 confusion. And I think governance in this state of education is
20 just a shambles.

21 I mean, we have locally elected boards who have
22 very little power. We have, you know, a state that doesn't know
23 who's in charge. No one's in charge. As a parent I can tell
24 you I saw the frustration with trying to -- and then as a former
25 teacher.

26 SENATOR BOWEN: But when we talk about locally
27 elected boards not having much power, while I appreciate the
28 sentiment, the reality that I've dealt with as a Legislator not

1 serving on the Education Committee in the last few years is a
2 series of local school district bankruptcies or near
3 bankruptcies: Compton, Richmond, Fresno now.

4 So, that's not to say that if the State Board of
5 Education ran the whole shebang that we wouldn't have that
6 happen, but in your view, who's responsible for dealing with
7 that problem?

8 Really, I think, we have a significant number of
9 districts now that are hanging over the edge of an geologically
10 unstable cliff. How would we create a system where we could
11 evaluate that before we got into the kind of terrible trouble
12 that leads to state takeovers, bail outs, and terrible results
13 in the short run for the kids in many of those districts?

14 MS. JOHNSON: I think there has been a natural
15 evolution over the last 15 years or so, when the first districts
16 that I can remember running bankrupt was in Richmond. And I
17 know Senator Perata appreciates -- I remember sitting in Senate
18 Education Committee when I think it was Oakland was coming
19 forward, and Gary Hart asking the folks who were there, was
20 there something in the water in the East Bay because we'd had
21 Emoryville, we'd had --

22 CHAIRMAN PERATA: Have you heard from Gary Hart
23 since he made that remark?

24 MS. JOHNSON: Yes, actually I talk to him a lot.
25 I actually volunteered a program he started at Kennedy High.

26 But I think that it has come through an evolution
27 which has strengthened -- ironically at the time when some are
28 calling for the elimination of county offices -- when they've

1 been strengthened to actually deal with those issues.

2 I think you do have to keep it more on the local
3 level. I think the counties have stepped up to the plate, most
4 of them, and are keeping a closer eye on it.

5 I think the only way you can deal with it is the
6 way we are dealing with it in a sense, which is to try and
7 create as many early warnings systems as we can, have the
8 counties in a sense function in that sense.

9 There was some legislation passed last year which
10 I think beefed up some of that, which is probably a good idea.
11 But it's going to be painful.

12 We have, over the last 30 years, moved from a
13 state that had local schools, community-based schools, to
14 something that is much more of a state top-down driven system
15 which has a lot of problems, has a lot of benefits.

16 But it's -- I don't know how you deal with it.
17 You know, I just sit and look at my own community, where the
18 kids in that community don't go to the local school. It's
19 really come a long way. And that's why, I guess, I just kept
20 coming back to just keep looking whether the kids are learning.
21 Make up our minds what we want them to know, see if -- our
22 textbooks, our instruction, all comes back to that, and just
23 keep your eyes on whether our kids are learning anything.

24 That's the only way we can make sense out of it,
25 here or locally.

26 And I think in terms of the financial things we
27 just still have to count on, there are locally elected
28 officials. If they run the districts into the ground through

1 some bad -- bad decisions, limited as their decision making may
2 be, they are the ones who made the decisions to set up a lot of
3 those situations. And there is the power of the vote.

4 SENATOR BOWEN: Yes, I'm well aware of that.

5 But when we were dealing with Compton, I'm sure
6 the Assemblyman, Lieutenant Governor, et cetera, will give you
7 an earful on this, it wasn't the board members who suffered. It
8 was the kids who --

9 MS. JOHNSON: It never is.

10 CHAIRMAN PERATA: I'll take a motion.

11 SENATOR BATTIN: Move.

12 CHAIRMAN PERATA: We have a motion. Please call
13 the roll for confirmation.

14 SECRETARY WEBB: Senator Ashburn.

15 SENATOR ASHBURN: Aye.

16 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

17 SENATOR BOWEN: Aye.

18 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

19 SENATOR CEDILLO: Aye.

20 SECRETARY WEBB: Cedillo Aye. Senator Battin.

21 SENATOR BATTIN: Aye.

22 SECRETARY WEBB: Battin Aye. Senator Perata.

23 CHAIRMAN PERATA: Aye.

24 SECRETARY WEBB: Perata Aye. Five to zero.

25 CHAIRMAN PERATA: Congratulations.

26 MS. JOHNSON: Thank you.

27 CHAIRMAN PERATA: Now, Mr. Williams, that was
28 just for drill. This is the real.

1 I'd like to welcome you and Governor Dymally, who
2 is here to introduce you. And thanks for your patience,
3 Governor.

4 ASSEMBLYMAN DYMALLY: Thank you.

5 Mr. Chairman, I could give a one-on-one lecture
6 on those pictures up there.

7 [Laughter.]

8 ASSEMBLYMAN DYMALLY: Senator Bowen, we missed
9 you in Compton. We are facing some serious problems at a
10 community college there.

11 Thank you very much, Mr. Chairman and Members.

12 Mr. Williams, Members, had the good sense to
13 locate his school in my district. In fact at one time I was
14 worried. It was right across the street in Mr. Thomas'
15 district. But he had the good sense to move over and built a
16 very impressive building there.

17 It's not often when someone from the 52nd
18 District gets nominated to any state office, and I am here to
19 highly recommend him to you.

20 CHAIRMAN PERATA: Thank you, sir.

21 ASSEMBLYMAN DYMALLY: I have an appointment with
22 the Secretary of Education.

23 CHAIRMAN PERATA: Oh, thank you for your
24 patience. I appreciate that. We'll take good care of him.

25 Mr. Williams.

26 MR. WILLIAMS: Good afternoon. It's really my
27 pleasure to be here, President Perata, Members of the this
28 distinguished body.

1 I will try and be really brief with my comments.
2 I know it's been a very long day.

3 I think first and foremost I would like to
4 highlight the fact that I see myself as a teacher, always have.
5 And now that I'm an administrator, and get called things that
6 may go beyond A, but that begin with A, I hold to the fact that
7 teaching has been a real blessing for me.

8 Actually counter to the statement that those who
9 can do, and those who can't teach, I actually began as an
10 investment banker. And I had a roommate from UCLA who actually
11 inspired me to consider visiting his school during a career day.
12 And I went to Watts, California, and began my teaching career
13 there in the Los Angeles Unified School District and met great
14 success there, using the accelerated school model. Watched kids
15 grow; watched families getting engaged.

16 And since then, I've started a new school. And
17 as founder of the Accelerated School, which as the Assemblyman
18 pointed out, is located in South Los Angeles, we've been
19 fortunate to create what we believe is really the best
20 environment for all children, one where in just ten short years,
21 we've moved kids from the bottom decile to competing with their
22 peers on the state average relative to the standardized testing.

23 We are 60 percent Latino, 40 percent African-
24 American. Actually, those numbers are a little bit off because
25 in the last five years, we've seen a sprinkling of Caucasian
26 children and Asian children also come back to the area because
27 of the quality of education that we provide.

28 We have a lot of special programs, but obviously

1 the strong instructional program is the most critical. But we
2 also have programs that some schools don't have, like a very
3 rigorous physical ed program. Our kids are out-performing the
4 state average in physical ed, something that when I was a kid I
5 remember getting my Presidential Seal for physical fitness.
6 Hopefully, we'll begin to see those types of things again. As
7 well as, we have other innovative programs in the arts. And
8 most recently in the last five years have been permitted a yoga
9 program to help kids with their balance and being able to focus
10 and concentrate.

11 But these programs have been made possible
12 because we've been able to have some really unique public and
13 private partnerships with the community. Parents commit to
14 being involved at the school. We provide workshops to parents
15 who need them. Other parents help train other parents in
16 everything from computer programing, to resume development, and
17 English language development.

18 The business community has been a critical part
19 of the Accelerated Schools, which is evidenced by the new
20 building that we've -- are 99 percent complete with, that
21 includes a program to accommodate kids from pre-kindergarten
22 through 12th grade.

23 The full mission of our school is to prepare
24 these kids for college, because we believe the college
25 curriculum is one that all kids deserve and can aspire to with
26 the right kinds of supports and parental involvement.

27 We also, because so many of our kids are
28 under-insured or uninsured with health insurance, we have a

1 health clinic on site that was designed into the facility. We
2 have a professional development center to train and support our
3 teachers, as well as to bring in educators across the nation and
4 around our state to come and help think and learn with us.

5 Together, we are beginning to transform South
6 Central Los Angeles, at least that corner of Martin Luther King,
7 Jr. Boulevard and Main Street. The building definitely speaks
8 to something big is happening there, and we see it as only our
9 beginning.

10 And I see my primary goal on the State Board of
11 Education is to bring those very real community-based
12 experiences to the policies that are passed by the state body.

13 Thank you.

14 CHAIRMAN PERATA: Thank you.

15 SENATOR CEDILLO: Mr. Dymally left, and I think
16 it's important to ask, because I think you're bringing a
17 tremendous contribution to the Board, but how do we have or how
18 do we ensure that the Board is reflective of the demographics of
19 the state, and that we're pulling on all the talent of the
20 state?

21 I think it's almost unfair as a question for you.
22 But the Board should look at itself and generally figure out
23 strategies to engage the Governor about acquiring new members,
24 transitioning members in so that the Board is reflective of the
25 state's demographics, and brings all the talent that's
26 available, as yourself, to the Board that have an authentic,
27 organic, intimate relationship with the communities that we are
28 setting policy for.

1 MR. WILLIAMS: I can certainly speak to the fact
2 that since I've been on the Board, I've recommended to the
3 commission, particularly the English language learner
4 commission, someone whom I have great respect for, who grew up
5 in East Los Angeles, and has experience in the bilingual,
6 bicultural methodologies from Columbia University.

7 And I agree with you.

8 CHAIRMAN PERATA: I'll ask you, I just saw this
9 about your school. I'm trying to figure out, how many students
10 do you have?

11 MR. WILLIAMS: We're up to 830 this year.

12 CHAIRMAN PERATA: Okay.

13 MR. WILLIAMS: Last year we were at about 600.
14 We're growing going over time. Actually, we're adding a grade
15 level per year, so we're up to K-10 now. Next year we'll add 11
16 as well as preschool. And then the 12th grade year the
17 following year.

18 CHAIRMAN PERATA: And this is chartered with
19 the --

20 MR. WILLIAMS: It's a charter with the Los
21 Angeles Unified School District, correct.

22 CHAIRMAN PERATA: Thank you.

23 SENATOR ASHBURN: Just one question,
24 Mr. President, related.

25 Could you do what you're doing in a traditional
26 public school? If not, why?

27 MR. WILLIAMS: Well, we attempted to back in
28 1994, to convert. You can convert existing public schools to

1 charter schools, but there has to be a threshold of support. And
2 we did have about 50 percent support from the faculty of our
3 former school to convert that school to charter, but we didn't
4 feel like that was a threshold that we were satisfied with in
5 order to convert that school in the way we wanted to, as well as
6 to have the kind of fiscal autonomy that we felt necessary in
7 order to attract partners to really participate and know that
8 their investment of participation would result in something like
9 we've been able to do.

10 Things have become a little more friendly over
11 time.

12 SENATOR ASHBURN: I'm not sure that's what I'm
13 asking.

14 Why can't the public school have kids learning
15 the way your kids are learning? What are the impediments in
16 the public school, the noncharter public school, that prevent
17 kids from learning as your students are learning at a very
18 accelerated rate?

19 I mean, it makes perfect sense to me that you
20 highlighted physical education. Either you take young people,
21 high school and junior high and elementary, the need to burn off
22 some energy. That's not even a part, or it's barely a part any
23 more.

24 It seems to me that in becoming a member of the
25 State Board, if you have a model that's a success, what I would
26 have in my mind, if I were you, would be how could I take what
27 I've learned, and what we are now applying successfully in a
28 chartered environment and make it available for every kid,

1 recognizing that most of the students are not going to be in a
2 charter school.

3 MR. WILLIAMS: Right. And I'd agree with you 100
4 percent there, in that we believe a lot of things that we do can
5 be done in public schools but have never been expected from the
6 traditional public schools.

7 And I think it's very important to point out,
8 obviously, that charter schools are public schools, but they do
9 have extended freedoms that traditional schools don't have in
10 terms of, they're really freed from a lot of regulation,
11 certainly all of the district regulation, but also a lot of the
12 state regulations.

13 So, we have freedom to, for one, require and
14 expect that parents will be involved at the school on a regular
15 basis. I think there's a very high correlation with parent
16 involvement and student achievement.

17 That's something that now we see -- some of the
18 schools in our neighborhood are afraid to really say this, but
19 they say that, "This is a mandatory parent meeting," and then
20 they kind of, you know, sheepishly look around and see if folks
21 really showed up, and if they're going to get in trouble by
22 their senior supervisors for saying that the meeting is
23 mandatory, because there's concern around saying that meetings
24 are even mandatory in traditional public schools. But you know,
25 that's one small way.

26 As well, obviously, having the freedom to say
27 that we want to have an arts program when you're looking at the
28 time that's allocated for reading and writing and math, it makes

1 it very difficult. So, what we do in response is, we for those
2 special programs, raise additional money, and we extend our
3 school day. We open up the school on Saturdays.

4 So, there are other flexibility kind of measures
5 that we have as a charter school that districts can grant their
6 schools also. They can. You need the will, and you need the
7 support in order to do that.

8 SENATOR ASHBURN: The answer could probably take
9 forever in terms of a challenge.

10 What I would ask of you, as you are confirmed, to
11 take that on as your personal responsibility, to try to apply
12 your experiences, your observations, so that every kid in
13 California might have the same opportunity to be excited about
14 learning.

15 It may well be the fact that there are arts
16 available on your campus that aren't available. I mean, that
17 may be the thing that is -- probably is.

18 MR. WILLIAMS: Right.

19 SENATOR ASHBURN: -- that kids are inspired,
20 motivated to be there. And yeah, they got to do the reading and
21 the other academic things in order to be able to do the things
22 that really excite them.

23 Anyway, I think you're an inspiring person. I
24 just think you're terrific.

25 MR. WILLIAMS: Thank you.

26 CHAIRMAN PERATA: Any questions?

27 SENATOR BATTIN: I believe probably all the
28 Members have seen Mr. Williams' packet on the Accelerated

1 School. If you haven't, I would suggest you look at it.

2 We were talking about this here. The fact is, it
3 certainly seems to me that you have taken a lot of your personal
4 drive and commitment to education, and you turned it into
5 something that those students and parents can be proud of.
6 There's not a lot of times that people say they're proud of
7 their school. They're grouching about schools at lot of times.

8 And if you just look at this building, Susie next
9 to me said, "Oh, that's a beautiful building. I'll bet they're
10 proud to go there."

11 MR. WILLIAMS: Absolutely.

12 SENATOR BATTIN: I bet that's probably why you
13 built it that way; wasn't it?

14 MR. WILLIAMS: Absolutely.

15 SENATOR BATTIN: This was something that we can
16 do if we come together as a community. And to prove that, we're
17 going to put it in a really hard place, and difficult challenge,
18 and we're going to bring up those kids because, you know, God
19 doesn't make dumb kids. Society makes dumb kids, but we all
20 start out kind of equal.

21 MR. WILLIAMS: Absolutely.

22 SENATOR BATTIN: I compliment you. And when you
23 left my office, Bill Bailey and I went, "Whoa, wow! We need
24 more of him. We need him to do more with our schools."

25 I'm glad that you're going to be confirmed on the
26 Board, and I'm glad that you're there. I think you're just
27 doing great stuff, and you need to broaden your message. You
28 need to get more followers on this.

1 MR. WILLIAMS: Thank you very much.

2 CHAIRMAN PERATA: We have a motion.

3 This is just by way of warning, because you've
4 touched on number of points that I'm very interested in.
5 Actually, Mrs. Johnson talked about this, that we now have a
6 top-down model in education. I think your counter-model is a
7 verification of that. I don't know that there's a prototype in
8 that case applied equally.

9 You know, you have talents that obviously are
10 exceptional in this regard. The fact that you would be smart
11 enough to leave investment banking and go into teaching speaks
12 for itself.

13 [Laughter.]

14 CHAIRMAN PERATA: But parent workshops where you
15 have parents tutoring parents, the fact that you've hit upon
16 that an on-site teacher training or professional development
17 center is important, are things that I'm great believer in.

18 But more importantly, I think we ought to be
19 ridding ourselves of lot of the noise that exists between
20 Sacramento and the school site and allow the kind of
21 flexibility that you have more broadly.

22 From time to time, I'm going to probably impose
23 upon you to give me some thoughts on certain things, because
24 over the last 10 years, the same time you've been successful,
25 the public, the California tax paying and parent public --
26 parents have been walking with their wallets -- you've been
27 going this way, and the esteem and confidence in public
28 education and this body in making it better have gone the other

1 way.

2 And so, as long as you're going to be on the
3 Board, and you're going to get that hundred bucks per diem, I'm
4 going to get my money's worth.

5 [Laughter.]

6 CHAIRMAN PERATA: I hope, sir, that you'll return
7 my call when I place it.

8 Congratulations to you. We'll have a roll call,
9 please.

10 MR. WILLIAMS: Thank you.

11 SECRETARY WEBB: Senator Ashburn.

12 SENATOR ASHBURN: Aye.

13 SECRETARY WEBB: Ashburn Aye. Senator Bowen.

14 SENATOR BOWEN: Aye.

15 SECRETARY WEBB: Bowen Aye. Senator Cedillo.

16 SENATOR CEDILLO: Aye.

17 SECRETARY WEBB: Cedillo Aye. Senator Battin.

18 SENATOR BATTIN: Aye.

19 SECRETARY WEBB: Battin Aye. Senator Perata.

20 CHAIRMAN PERATA: Aye.

21 SECRETARY WEBB: Perata Aye. Five to zero.

22 CHAIRMAN PERATA: Congratulations.

23 MR. WILLIAMS: Thank you.

24 [Thereupon this portion of the
25 Senate Rules Committee hearing
26 was terminated at approximately
27 4:02 P.M.]

28 --ooOoo--


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of February, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

January 18, 2005

Thomas Campbell, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814

Dear Mr. Campbell:

As you know, the Senate Rules Committee has scheduled a hearing on your confirmation as Director of the Department of Finance for Wednesday, February 9th at 1:30 p.m. in Room 113 of the State Capitol. Prior to the hearing, we would appreciate your written responses to the questions below to help provide background material that will enable us to begin our discussion with you at a higher level.

Please respond by January 31, 2004, so committee members will have sufficient time to review the material before your confirmation.

The Director of Finance serves as the governor's chief fiscal policy advisor with emphasis on the financial integrity of the state and maintenance of a fiscally sound and responsible administration.

Question:

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as Director of the Department of Finance?*

When you were appointed Director of Finance, you made a statement that, as Director, you "...look forward to the work of crafting a responsible state budget that stimulates growth and creates jobs – getting more jobs for more Californians is our top priority."

Questions:

- 2. Please identify the proposals in the budget that you believe will accomplish that goal. Please share any data that supports this contention.*
- 3. As an economist, how would you characterize the California economy of today? To what degree do you think our state and local revenue structure is aligned with California's economy? Are there specific revenue sources that you believe should be "updated" to reflect the current economy of the state?*
- 4. Do you subscribe to the theory that tax credits for businesses stimulate the economy? Is there evidence that supports this theory and, if so, is it more applicable to some sectors of the economy than others?*
- 5. How do you believe the state should prioritize and evaluate spending programs given the revenue limits the state faces? What programs do you believe are the most important as an investment in the future of the state?*

Fiscal Integrity of the State's Financial Systems

The Governor's CPR highlighted potential serious shortcomings within the state's fiscal and accounting systems. The report cited a variety of problems including neglect of compliance with effective systems of internal control, lack of routine audits, the fact that many financial systems are obsolete due to deferred maintenance, and the fact that the state is facing diminishing staff resources to maintain its systems and the integrity of its financial data.

The Department of Finance houses two important fiscal oversight functions; its program evaluation unit and its audit division. Most of the activity of these two units is done on a reimbursable basis; that is, if a department wants Finance to perform an audit, it pays for it.

Questions:

- 5. Do you believe that it is appropriate for an oversight function, such as an audit, to be done on a reimbursable basis? Are the entities that may most need assistance or information the ones who will ask for an audit?*
- 6. Given the high risk for financial integrity cites in the CPR, what are your plans to strengthen the audit and accounting structures within state government? Are there additional financial oversight steps that should be implemented?*

Information Technology

Many have criticized the process by which approval must be gained for information technology projects. It requires an approved feasibility study report and then an approved budget change proposal for funding. While all of the documentation in these requirements is essential, the timeline for approval and funding is such that by the time the project is activated, the technology may be outdated. In addition, the state has seen failures in activating systems as well as significant cost overruns.

Question:

7. *What options can you identify for changing the current approval process to gain better outcomes in technology projects? In a time of limited resources, what can be done to advocate for and invest in IT projects that could help increase efficiency and program knowledge and perhaps lead to additional savings and efficiencies. An example might be a prisoner tracking system for the Department of Corrections?*

Please direct your responses to Nettie Sabelhaus, Rules Committee
Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:DC:cm



January 31, 2005

President Pro Tempore and Members of the Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814

Dear Mr. President Pro Tempore and Senators,

Thank you for scheduling this hearing to consider confirming my appointment as Director of Finance. I received your questions and offer my written responses in what follows. Of course, I look forward to offering any amplification on these, or any other points, when I appear before the Rules Committee.

1. My hope as Director of the Department of Finance is to work with the Legislature to produce a budget and a budget structure that will encourage jobs to come to California, that will take care of the State's most needy, and that will help our education system provide the essentials to be competitive in the economy our children will inherit. I would also hope that the Department will be successful in its management oversight and audit responsibility, and that it will continue to utilize technological innovations such as those that made the e-budget possible this year.

2. The budget contains an increase in the General Fund share of Proposition 98 funding for California education in excess of 7 percent. This increase is greater than the relevant school-age population growth and the cost of living. Higher education also receives a substantial increase. Education is fundamental to training Californians for the jobs that will be available in the coming years. The Governor's initiative on skill training in high school and community colleges is explicitly targeted to developing the talents needed to be employed.

It is also critical that California present a welcoming environment for those with jobs to offer. I share the Governor's belief that tax increases will cause businesses to take jobs out of our state. Hence, the budget's having avoided tax increases is, I believe, a major plus in accomplishing the goal of creating more jobs for Californians. Your question asked for available data; I attempt to provide that in what follows.

The California Competitiveness Project of the California Business Roundtable commissioned a study in 2002 by Bain & Company of jobs in mobile sectors-industries, like electronics and software that are capable of locating outside of the state. Bain & Company reported, "Of the mobile sector companies interviewed, 55 percent have plans to move jobs out of California. The problem affects more than just mobile sector companies. Half of all companies interviewed have formal policies proscribing the addition of jobs in California." *Assessment of California Competitiveness*, February, 2004, p. 2.

Levels of taxation are an important part of the decision of where to locate jobs when companies expand. The *San Jose Mercury* ran a story last November on a typical business that moved from San Jose to Reno, Nevada. The paper reported, "Californians leave behind some of the nation's highest costs for real estate, taxes, utilities and worker's compensation insurance." ... "The company's state income tax bill in California was about \$100,000 a year. In Nevada, there is no state income tax. ... Since the beginning of 2001, Washoe County, Nev. - which consists mostly of Reno and Sparks - has added 9,570 jobs, a 4.8 percent increase. In stark contrast, Santa Clara County lost 210,410 jobs, a 20 percent drop, according to Economy.com. Over the same period, Santa Clara County lost 19 percent of its non-tech manufacturing jobs, compared to an increase of 4.6 percent for Washoe County." Sam Diaz, "Lower costs, easier lifestyle attracted valley company," p. 1, 25A, *San Jose Mercury News*, November 14, 2004.

Chief Executive Magazine's publisher company recently ran a survey of over 450 CEO's on the most business-friendly states. Based on "low costs, low taxation, and relatively better regulation," Texas came in first; Nevada and Florida tied for second; California came in last. <http://www.chiefexecutive.net/ceoindex/1204/results.txt>

So-what are those tax levels? They're already high in California, way above the national average.

The U.S. Census Bureau reports, that in the most recent fiscal year for which there are data, 2003, total state and local taxes per capita in California were the tenth highest in the nation, 18 percent higher than the national average. (Texas was number 50.) <http://www.census.gov/govs/statetax/03staxrank.html>

Nor does it make sense to propose to tax individuals: partnerships and subchapter S corporations pay tax at the individual levels, and those are the kind of small companies that provide most of California's jobs.

The District of Columbia, in an effort to show they are not the worst place for people to do business, ranked states by taxes in the largest city in each state. California (Los Angeles) came in number 7 for those making above \$150,000 per year, and number 9 for those making under \$25,000. In all other income categories, California (Los Angeles) was never below the top half. *Tax Rates and Tax Burdens in the District of Columbia-A Nationwide Comparison*, August, 2004. (<http://www.cfo.dc.gov/cfo/cwp/view,a,1324,q,612643.asp>) at p. 8-12.

Most ominously, businesses look at trends in tax levels, on which to base not only their assessment of where taxes are high, but also their prediction of where taxes are likely to get higher. In January 2004, Ernst & Young prepared a report for the Council on State Taxation. The study observed that, from fiscal year 2000 to fiscal year 2003, only six states "had business tax increases greater than the increase in total taxes." California was one of them. *Total State and Local Business Taxes, A 50-State Study of the Taxes Paid by Business in FY 2003*, January, 2004. If a company believes taxes on businesses are likely to increase in a particular state, it is less likely it will choose to locate or expand operations there.

Cisco's President, John Chambers, recently wrote, "In our most recent discussions, my peers indicated that while they have plans to expand their businesses, they do not intend to grow their operations in California until the business climate here improves. Their primary reason for not making further investments in California is its hostile business environment created by increased regulations, the threat of new taxes, growing litigation costs, the lack of affordable broadband access for all, and policy makers' indifference to the business community. The fiscal

situation of California is their leading concern. While most business leaders recognize that this is an inherited problem, they are very concerned that taxes or fees will be increased in an effort to raise revenue without reigning in spending." Letter from Cisco CEO John Chambers to Governor Schwarzenegger, December 17, 2004.

Silicon Valley's recent loss of high paying jobs makes this fear become real.

The San Jose Mercury News of January 23, 2005, carried a sobering editorial under the heading "Warning Signs for Silicon Valley--Recovery sets Stage for Income Gap." The editorial cites data from Joint Venture Silicon Valley Network to show that employment in Silicon Valley is recovering but it's a different kind of employment--lower skilled and with lower wages. Citing data from second quarter 2004 over the prior year, the Mercury notes that employment in software dropped 3/10 of a percent, in semiconductors, 3.6 percent, hardware, 5.1 percent, biomedical 2.5 percent, electronic components 3.9 percent, while business services grew 2.3 percent and building construction services grew 1.6 percent. The latter two components actually showed a decline in average pay, however, of 1.1 percent and 3.5 percent, respectively.

3. I would characterize California's economy as beginning a recovery from a deep recession in the Bay Area, engaging in serious economic re-adjustment along the northern coast, experiencing a modest but still incomplete recovery from the 9/11 shock in the tourism oriented areas, and still experiencing an unacceptably high level of unemployment in much of the Central Valley. Many parts of the state continue to be at risk of a permanent loss of jobs to other states and other countries. However, the state's overall economic growth and employment numbers are healthy and on a positive trend; and I believe the accomplishments of Governor Schwarzenegger's first year have had a significant role in that achievement: particularly, the progress reached on workers' compensation reform last year, the improved bond rating following the passage of Proposition 57 and 58, and the initiative reform that restrained the kind of lawsuit that causes businesses to limit their exposure to California.

Our state revenue structure relies on the personal income tax for about half of our revenues, the sales tax for about a third, and corporate tax for about one tenth. Local revenues rely principally on property tax. Proposition 13 keeps the property tax revenue from rising as quickly as the actual value of homes; income taxes tend to provide revenue more variable than the general health of the state; sales taxes align fairly well with the State's economic activity.

I do not have any specific revenue sources to identify that should be "updated" to reflect the current economy of the State.

4. Lower overall tax levels and lower variability in taxes are the principal tax factors that help stimulate the economy. I believe those factors are more salient at the state level than industry-specific tax credits. The best evidence I have at hand is contained in my answer to question 2, above. The sectors for which this is most true are those identified in that answer as "mobile" -- the kind of industry that can move out of the State.

5. The State should evaluate spending programs along the yardstick of what is likeliest to improve the job situation in our State. Virtually every societal pathology worsens as unemployment rises. I believe education is the most important investment the state can make; after that would come transportation infrastructure.

Fiscal Integrity of the State's Financial Systems

5. It is appropriate for an audit to be done on a reimbursable basis, so long as the auditor, in this case, the Department of Finance, is in control of the scope and content of the audit. That is, essentially, what happens in private industry. However, asking for an audit should not be the only means of an audit being done. I favor the Department of Finance conducting its audit function on a regular schedule and to keep itself accessible for unannounced audits. Additionally, the Department of Finance is increasing its focus on internal control audits for State departments and agencies.

It is true that entities that may most need assistance may, for that reason, not realize their need, and hence not ask for it. Nonetheless, situations that prompt audits can come to our attention through other sources, such as legislative and media inquiries, as well as a schedule of routine audits of each state agency on a regular basis.

6. The Department of Finance has submitted a 2005-06 budget change proposal seeking resources to continue the development of a new statewide financial system, the Budget Information System (BIS). BIS has been in the planning and development stages within the Department of Finance for more than eight years. This system is critically needed to replace the budget preparation systems used by the Department of Finance and to provide a single integrated system that seamlessly interfaces appropriate budget information between the Department of Finance, state agencies and the Legislature.

From a statewide enterprise standpoint, BIS follows the 21st Century Project (Human Resources Management System-HRMS), which is currently under development at the State Controller's Office. This statewide enterprise technology platform provides the ability to interface the BIS with the HRMS, and will be the foundation of an improved financial system infrastructure for California. The BIS is an important step toward implementing the CPR recommendation regarding the need for the State to develop a comprehensive financial system to provide critical information needed to make budget decisions. Once the budget component of BIS is operational, we will begin the process to incorporate a statewide accounting component into this new technology platform. Over time, we expect to implement business modules on this platform to give the state a full complement of common business tools to manage and control state operations.

Information Technology (IT)

7. I believe that the office of the Chief Information Officer and the Department of General Services currently share this responsibility. I would favor more autonomy for state agencies to obtain the kind of IT they need, within broad parameters of functionality, interoperability, and cost. Agencies should have the authority to tailor their IT to their specific needs, even at the cost of some lack of uniformity.


IT projects that could help increase efficiency and program knowledge would, I believe, be likely to be identified through a consolidation of functions in a single Chief Information Office (CIO), with which any agency contemplating procuring IT would have to consult before proceeding.

The CIO would also offer the possibility of procurement savings, where more than one agency decided on the same system.

I am insufficiently familiar with the prisoner tracking system within the Department of Corrections to recommend a change or not. However, I would certainly lend assistance through experts within the Department of Finance to work with the CIO and with the Secretary of the Department of Corrections to implement improvements that were appropriate.

Again, my sincere thanks for scheduling this hearing. I look forward to being a cooperative partner in the important work that we share.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tom Campbell", with a long horizontal flourish extending to the right.

Tom Campbell

Ruth E. Green
1377 School House Road
Santa Barbara, CA 93108
phone 805.969.6139 • fax 805.969.0690
e-mail: ruthgreen@cox.net

Question 1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Board of Education?

My goal when serving as a member of the State Board of Education (SBE) is to increase academic achievement for all students. The best way to accomplish this goal is to maintain the current system of standards based education. Standards based reform has been the most effective tool to date in raising student achievement, including economically disadvantaged and minority students. Increasing test scores show the validity of this approach.

Standards based education works because it aligns each of the component parts within the entire educational system. The content standards provide students, parents and teachers with clear expectations of what all students should learn. Aligned instructional materials reflect the deep content knowledge of the standards that includes universal access strategies to reach all students, including English language learners and those in need of intensive intervention. Professional development, provided through legislation such as AB466 and AB75, contribute to coherent educational practices that are directly tied to the standards. The STAR assessment program directly tests what is taught in the classroom, providing valuable information that guide instruction and policy. Each of these component parts are critical to the success of the system and their integrity must be maintained.

There are pressing educational needs for the state's six million children. The SBE has the obligation to provide the opportunity to learn the content standards. These standards, that reflect high expectations for all students, will contribute strongly to the goal of equity.

Question 2. Current State Board policy requires all instructional materials funding to be spent on board adopted materials. Many school districts would like to have the flexibility to spend some of those funds on materials that reflect local needs. Would you favor such a change?

Past State Board policy allowed 30 percent of Instructional Materials Funds to be used for purchase of textbooks not on list of state adopted texts. However under current state law, the Instructional Materials Realignment Program, enacted by the Legislature in 2002, requires that students be provided with state adopted materials in the four content areas of English/language arts, mathematics, history/social science and science.

These materials have undergone a comprehensive review by committees made up of teachers, principals, administrators, parent and content experts. Districts can be assured that the state adopted texts provide all students the opportunity to learn the academic

content standards in those core areas. Once districts have adopted those materials they have the flexibility to purchase supplemental materials.

Further flexibility is allowed, on a case by case basis, through the State Board of Education waiver process. For example, the high performing Palo Alto Unified School District (PAUSD) received a waiver to purchase a non-state adopted text. PAUSD demonstrated to the SBE, that with an intensive effort of additional teacher training and with the purchase of additional, supplemental texts, the district could provide a complete standards aligned program.

Question 3. Constituent groups such as the bilingual education community have in the past felt shut out of meaningful discussion with the Board of Education on matters important to them. With so many new appointments to the Board, what should the Board do, if anything, to help build a more positive relationship with this constituency and other constituencies who may feel similarly?

I believe in an open door policy with any constituent group. One way to accomplish greater communication and exchange of information is to fully utilize the State Board of Education Advisory Committees, such as the English Learner Advisory Committee (ELAC).

This approach worked well at the local level where I served for three years as the Santa Barbara School Board liaison member to the District English Learner Advisory Committee (DELAC). This committee made up parents, teachers and administrators, tackled many significant issues.

As a direct result of the DELAC meetings, after data analysis and discussion, recommendations were made to the school board to substantially improve our instructional program for our English language learners. New state adopted materials were purchased and greater instructional time devoted in English language arts and mathematics. This committee is a working, collaborative committee which continues to enhance the education of English language learner students.

It is my understanding that the State Board of Education will have the opportunity to make a number of appointments for not only the ELAC, but other important advisory committees as well.

Question 4. Under California's accountability system, schools that continue to fail academically require ever increasing interventions. The Board has a large role in determining the nature of the interventions. Does the State have the capacity to intervene when necessary? If not, what do you believe is needed?

Under No Child Left Behind (NCLB) there are approximately 1,100 designated Program Improvement Schools. Because of the NCLB requirement that all students must be proficient by 2014, it is anticipated that almost every school will be a Program Improvement school in the upcoming years. Additionally, under criteria approved by the SBE in March, next year there will be approximately 48 identified Program Improvement districts as well. It is estimated that there will be over 300 such districts by 2006. Again,

because of the NCLB proficiency requirement most districts will eventually be Program Improvement districts. The State will not have the capacity for this kind of intervention.

If NCLB remains unchanged in its 2006 reauthorization, the State must provide interventions and allocate resources to districts and schools based on the greatest need.

As of now, the State does have the capacity for these interventions and they are underway at 55 under performing schools (IUSP) involved in the School Assistance and Intervention (SAIT) process. Currently, there are 45 SAIT providers with multiple teams available for the lowest performing schools. Of the 1,100 Program Improvement schools, some are not yet to the stage targeted for corrective action, but simply need to reach smaller numbers of students to reach required proficiency levels. These schools need far less assistance to reach their goals.

Intervention and support for Program Improvement schools is a top priority. The State Board will be discussing this issue at the April 14 meeting.

Question 5. What is the appropriate role for the Board in addressing the problem of persistently low passage rates on the High School Exit Exam for students with disabilities and for English Language Learners?

The State Board of Education should maintain a consistent course that the Legislature has established in offering a system of standards based education of which the high school exit exam is a part. The system provides high quality standards aligned instruction, textbooks, teacher training, interventions, testing and accountability.

The exit exam has focused educators on the needs of all students, but particularly those most at risk, which include our special education and English language learner populations. This intense focus has improved instruction and results. There have been strong gains in test scores since the implementation of the high school exit exam that we otherwise would not have seen.

There still is a need to allow for some flexibility with specific groups of students. Special education may receive a waiver of the exit exam requirement granted by their local school boards. English language learners who do not possess sufficient English language skills may defer the exit exam for up to 24 months until that student has had six months of English reading, writing and comprehension study. Accommodation of extra time is also given.

Due to Senate Bill 964 (Burton), the SBE will receive a report which will provide specific recommendations about graduation requirements and assessments for special education students that have either an Individual Education Plan (IEP) or a 504 Plan. This report will provide great assistance to the SBE in addressing the needs of special education students.

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SENATE RULES COMMITTEE

JOHN L. BURTON
CHAIRMAN

April 2, 2004

Ms. Glee Johnson
2708 Curtis Way
Sacramento, California 95818

Dear *GL* Ms. Johnson:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the State Board of Education on Wednesday, April 21, 2004. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

Following are questions which we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that Senators might conduct a more informed discussion with you at the hearing. Please have this information in our office by Wednesday, **April 13, 2004**. It would be greatly appreciated if you would fax your responses to 916 445-0596.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Board of Education?
2. Current State Board policy requires all instructional materials funding to be spent on board adopted materials. Many school districts would like to have the flexibility to spend some of those funds on materials that reflect local needs. Would you favor such a change?
3. Constituent groups such as the bilingual education community have in the past felt shut out of meaningful discussion with the Board of Education on matters important to them. With so many new appointments to the Board, what should the Board do, if anything, to help build a more positive relationship with this constituency and other constituencies who may feel similarly?

4. Under California's accountability system, schools that continue to fail academically require ever increasing interventions. The Board has a large role in determining the nature of the interventions. Does the State have the capacity to intervene when necessary? If not, what do you believe is needed?
5. What is the appropriate role for the Board in addressing the problem of persistently low passage rates on the High School Exit Exam for students with disabilities and for English language learners?

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Peace and friendship,


JOHN L. BURTON

JLB:nsjif

**Glee Johnson
2708 Curtis Way
Sacramento, California 95818-3927**

April 14, 2004

Hon. John Burton, Chair
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Subject: Responses to questions related to confirmation of appointment to
the State Board of Education

Dear Senator Burton:

Thank you for providing this opportunity to address questions essential to your confirmation inquiry, and for the opportunity to follow-up in oral discussion with the members of the Senate Rules Committee on Wednesday, April 21, 2004.

It is an honor and a privilege to have been appointed to serve on the State Board of Education by Governor Schwarzenegger. While public education policy is an area of government that has provoked disagreements from time to time, it is truly amazing that the vast majority of major education reform legislation over the past 25 years has been enacted with virtual unanimity – Democrats, Republicans, and the occasional Independent, joining together to improve our children's futures.

This fact demonstrates, I believe, that there is much more consensus than contentiousness surrounding K-12 public education, and that the stage upon which California's education leaders stand is firm. Those of you who know me know that my efforts over these past 25 years – both within the Legislative and Executive branches of government – have been aimed toward consensus-building and reasoned, responsible decision-making, and it is toward those objectives that I will dedicate my service on the State Board of Education.

Statement of goals. The past decade has seen development and initial implementation of extremely important initiatives in K-12 education, including creation of content standards, development of new frameworks and instructional materials, class size reduction, and implementation of public school accountability. Generally, I believe it is time to consolidate our advances and focus more on refinement than on searching out dramatic new directions. In the spring of 2008, it is my hope that the education community will look back on the State Board's work of the preceding four years and be able to say that we...

Hon. John Burton
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- Maintained the integrity of California's academic content standards in the core subjects of English-language arts, mathematics, history-social science, and science, and established a responsible protocol for refinement of these standards over time.
- Developed model standards for other areas as called for in statute (including physical education and career-technical education), and ensured that these standards are substantive and comprehensive, yet at the same time not overwhelming in complexity. These model standards need to be developed within a realistic context of the finite nature of instructional time.
- Continued to develop and refine the state's assessment and accountability system, and ensured that all tests remained valid and reliable.
- Faithfully carried out and advocated for constructive change in the No Child Left Behind Act of 2001. There is no question that the State Board, as California's "State Education Agency" for federal purposes, must ensure the state's compliance with NCLB. We must not imperil the nearly \$6 billion that California receives annually in federal support for education. At the same time, though, we need to continue to work on resolving differences between NCLB's accountability measure, Adequate Yearly Progress, and California's Academic Performance Index.
- Adopted excellent choices of basic instructional materials programs in history-social science (2005), science (2006), and mathematics (2007), and set the stage for a solid new adoption in reading/language arts/English language development (in 2008).
- Continued actively to implement the state laws providing for meaningful professional development tied directly to instructional materials programs (i.e., not "generic" professional development) in the core subjects.
- Intervened in high priority schools in progressive ways that emphasized technical assistance to improve student achievement, and ongoing management of schools by the state.
- Continued California's noteworthy and methodical progress toward inclusion of students with disabilities in all aspects of K-12 education.

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- Maintained the focus on English language development (ELD) for all English learners, and ensured that the next (2008) primary adoption in reading/language arts/ELD includes effective ELD components.

Instructional materials funding. State law does require that local allocations from the Instructional Materials Funding Realignment Program be used as a first priority for the purchase of adopted instructional materials in the core subjects for kindergarten through grade eight. Beginning in 2004-05, it appears likely that some portion of these allocations will be moved into a block grant, thus effectively removing any restrictions. The State Board has authority to waive restrictions on the use of instructional materials funds upon local request. Generally, I have no problem with supporting local flexibility, provided solid evidence is presented that the applicant agency's students will be getting the full, rigorous, standards-based academic content in the core subjects to which they are entitled. I would not support local flexibility for the purposes of purchasing watered-down curricula in the core subjects, or purchasing non-core supplementary materials if the agency's core-basic materials are out-of-date.

The real strength of the state instructional materials adoption process – which is limited to basic, comprehensive programs, not supplementary programs – is its guarantee of thorough coverage at grade-level, along with important features, such as adaptive strategies that enable teachers to meet the needs of special student populations (e.g., students with disabilities, English learners, and advanced learners) and assessment strategies that ensure student progress can be meaningfully monitored. State-adopted instructional materials programs have also been checked for legal and social compliance to ensure that they do not contain, for example, sectarian doctrine, adverse reflections based on race or gender, or commercial advertising.

Although complaints are certainly received from time to time – for example, about a particular program either being adopted or not being adopted – I believe that generally local education agencies want to purchase state-adopted basic instructional materials because they are comprehensive, solid programs that have been thoroughly reviewed by a broad cross-section of the education community, including content experts and practitioners. Even if the traditional funding constraints of statute are modified, I suspect that almost all local education agencies will continue to purchase state-adopted basic programs.

Openness to constituent groups, such as the bilingual education community. It would be ideal, of course, for the State Board to affirmatively seek out comment on every decision before it from all potentially affected individuals and organizations. There are several options available currently, such as the thorough online public display of briefing information provided to the State Board.

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A special public disclosure statute applies to the State Board and, as you know, the State Board has actually exceeded its requirements. All boards and commission should have this standard of disclosure. Of particular interest to the members of the Senate Rules Committee, the State Board is looking to make appointments in the next few months to the English Learner Advisory Committee, which advises the Board on issues of importance to English language learners. Finally, any past issues or perceptions surrounding the State Board's openness just have to be as they are -- there's nothing I can do to fix them. I can only look at the situation from here forward.

Intervention in high priority schools. State law calls for various interventions in high priority schools. The State Board members do not personally undertake these interventions. Rather, we approve local plans and oversee in a policy sense the work of CDE and local staff who carry out these plans and other requirements of law. There are certainly limitations on the numbers of schools in which intervention can be effectively pursued. With the Immediate Intervention/Underperforming Schools Program (II/USP), the state initially took on a greater burden than it was prepared to handle, spreading intervention funds and activities across a full spectrum of schools below the statewide average in student achievement. The effort eventually became more precisely focused in the High Priority Schools Grant Program, with funds being targeted to the lowest ten to 20 percent of schools ranked in relation to student achievement. Whether the state can maintain the funding needed over time (both for local assistance and for state operations) remains an open question. Later this year the State Board will be identifying Program Improvement districts pursuant to the federal No Child Left Behind act. We are advised by the CDE staff that approximately 50 districts will initially be identified for technical assistance. However, that number will greatly increase in the next several years to several hundred, because of the way the NCLB targets are structured. Unless the method by which NCLB creates its benchmarks changes, virtually all school districts in California (and the nation) will be identified by 2014 as needing improvement. Obviously, that trajectory is unsustainable. I would expect significant changes to occur in the NCLB during its reauthorization in 2006.

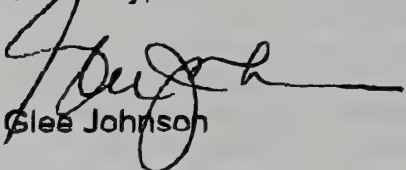
California High School Exit Examination (CAHSEE): students with disabilities. Senator Burton, your legislation (Senate Bill 964, Chapter 803, Statutes of 2003) provides for the hiring of an independent consultant "to assess options and provide recommendations for alternatives to the high school exit examination for pupils with disabilities," as well as for the creation of a special task force to advise the independent contractor. I believe that all of us look forward to reviewing the work of the independent consultant and any advice or guidance the task force may provide. From the standpoint of the State Board, I do believe that

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every effort was made to provide for accommodations within the framework of law. For example, the CAHSEE is untimed – students may take as long as they need to complete it. Also, students who are particularly susceptible to distraction by noise or other confusion in the testing environment may take the CAHSEE in a separate room from other test-takers.

In closing, allow me to thank you again for this opportunity to comment on these issues of particular interest to you and your colleagues. I would also like to reiterate my commitment to consensus-building and to the open, free exchange of ideas during my time of service on the State Board. I cannot promise that I can be all things to all people – sometimes difficult choices have to be made, and I am not afraid to make them. However, I do believe that I can realistically promise you that no one's point of view will be excluded from my consideration. Within the limits of my ability, I will be accessible and will fairly evaluate and act on the issues that come before the State Board.

Sincerely,



Glee Johnson

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JOHN L. BURTON
CHAIRMAN

April 2, 2004

Mr. Johnathan X. Williams
10746 Francis Place
Los Angeles, California 90034

Dear Mr. Williams:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the State Board of Education on Wednesday, April 21, 2004. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

Following are questions which we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that Senators might conduct a more informed discussion with you at the hearing. Please have this information in our office by Wednesday, **April 13, 2004**. It would be greatly appreciated if you would fax your responses to 916 445-0596.

Questions:

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the State Board of Education?
2. Current State Board policy requires all instructional materials funding to be spent on board adopted materials. Many school districts would like to have the flexibility to spend some of those funds on materials that reflect local needs. Would you favor such a change?
3. Constituent groups such as the bilingual education community have in the past felt shut out of meaningful discussion with the Board of Education on matters important to them. With so many new appointments to the Board, what should the Board do, if anything, to help build a more positive relationship with this constituency and other constituencies who may feel similarly?

4. Under California's accountability system, schools that continue to fail academically require ever increasing interventions. The Board has a large role in determining the nature of the interventions. Does the State have the capacity to intervene when necessary? If not, what do you believe is needed?
5. What is the appropriate role for the Board in addressing the problem of persistently low passage rates on the High School Exit Exam for students with disabilities and for English language learners?

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Peace and friendship,


JOHN L. BURTON

JLB:nsjff



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April 13, 2004

Ms. Nettie Sabelhaus, Appointments Director
Senate Rules Committee
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Room 420
Sacramento, CA 95814-4900

Dear Ms. Sabelhaus:

Thank you for this opportunity to share my thoughts on critical issues related to my appointment to the State Board of Education (SBE). As you requested, please find my responses to the questions you provided below.

Let me first start by sharing a little of my background. I began as a teacher with the Los Angeles Unified School District (LAUSD) in 1990 and witnessed first hand the need for schools to be focused on results and integrated into the community. Additionally, as union chairperson for the United Teachers of Los Angeles, I learned the role that policies and leadership play in the education system. It was these early experiences that continue to inform my quest to improve our public education system.

As a founder and co-director of The Accelerated School (TAS) in South Los Angeles, we have been fortunate to create what we believe is a great learning environment for children. In just ten short years, we have grown from fifty students to over 600 while improving student achievement from an average of the 20th percentile to the 55th percentile, based on the State's standardized test system. With a strong curriculum and instructional focus on language arts, science, social science and arithmetic, we have also improved our students' well being through special programs in the arts, physical education, health and yoga.

These special programs are made possible by effectively engaging our school families, business leaders and the entire community. Our parents commit to their children's success by being actively involved in the school through workshops, leadership and cultural celebrations. The business community has been a critical partner of TAS, which is evidenced by the new facility that is being constructed on the main boulevard. Our new school will allow us to house pre-Kindergarten through twelfth grade and serve the greater

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community through our health clinic, professional development center, library, gymnasium, and community service center. We like to think of it as preparing our students for college success, and beyond, while providing extended opportunities for our neighbors and educators. Together we are beginning to transform the community.

My primary goal as a member of the SBE is to draw from my professional experiences in LAUSD and at TAS to inform the discussion about how to further improve our State's public school system.

Question #2: Funding for Instructional Materials

Yes, I would favor local school districts' flexibility to spend some funds on materials that reflect local needs, with appropriate accountability measures in place. Such measures might include clearly delineated student achievement benchmarks over a specific period of time. Failure to meet agreed upon benchmarks would result in a forfeiture of this waiver.

Question #3: Bilingual Education

Fortunately, some of the appointees to SBE have direct experience working with the bilingual education community. At TAS, we have effectively built positive relationships with the bilingual education community through convening special forums that focus on their needs and celebrating their strengths. Through on-going community festivals, trainings, and joint training and development opportunities, we have created a sense of family at the School. The SBE has also made inroads in this area by having an English language committee to focus on the revisions for such state adopted textbooks as "Open Court" and "Reading First." SBE might also develop other committees to address specific needs that the bilingual education community deems critical to student success.

Question #4: Accountability

It is my understanding that the SBE presently has the capacity to work with the 55 IL/USP schools and have well-developed plans to support the 1,100 schools in Program Improvement under NCLB. However, our own accountability system, further complicated by NCLB, will increase dramatically the number of schools requiring State support and intervention.

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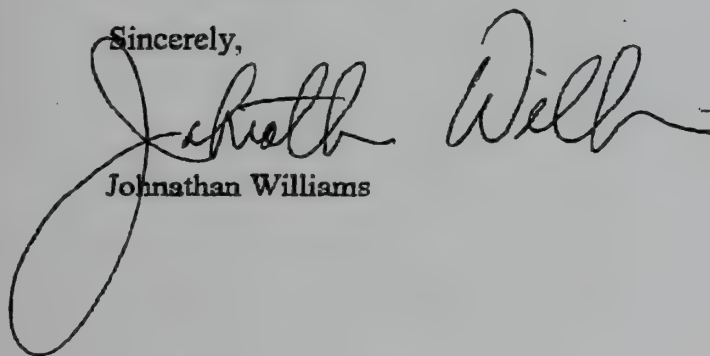
In order to meet this anticipated increase in demand, we would need to dramatically increase resources, human and financial, or seek policy changes that would prioritize resource allocation to the neediest children.

Question #5: High School Exit Exam

Current SBE policy allows special education students to receive a waiver from the California High School Exit Exam (CAHSEE) requirements should they have a specific disability. Since the Legislature codified this waiver policy, the responsibility now rests with local school boards. Moving forward, the SBE's role would be to review the local districts' policies and ensure appropriate application of the policies. For English language learners, the SBE's role should continue to be support of quality instruction and appropriate intervention.

I look forward to addressing you in person on April 21st. In the meantime, please do not hesitate to contact me if you have any further questions or need additional materials.

Sincerely,

A handwritten signature in black ink, appearing to read "Johnathan Williams", with a large, stylized loop at the end of the signature.

Johnathan Williams

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